LEGISLATIVE HISTORY

OF

H.R. 11256

89th Congress

FEDERAL TAX LIEN ACT OF 1966

PUBLIC LAW 89–719

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

EIGHTY-NINTH CONGRESS

SECOND SESSION

Prepared by the Staff of the Committee on Ways and Means for the use of the Committee on Ways and Means

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INTRODUCTION

The legislative history of H.R. 11256 is a compilation of legislative history materials relating to the enactment of Public Law 89–719. The purpose of this history is to make readily available all of the public documents containing pertinent information relative to the enactment of the law.

This document sets forth in chronological order the action taken by Congress with respect to this law. For example, section 1 sets forth the public law; section 2, final report of the Committee on Federal Liens, American Bar Association; section 3, bill as introduced in the House of Representatives, and so on.

This document contains the hearings held by the Committee on Ways and Means on March 2, 1966. Included in these hearings are the following: Press release dated February 11, 1966, issued by the Committee on Ways and Means, announcing 1-day public hearings on H.R. 11256 (Mills) and H.R. 11290 (Byrnes of Wisconsin), bills to amend the Internal Revenue Code with respect to the priority and effect of Federal tax liens and levies; the text of H.R. 11256 and H.R. 11290; and "American Bar Association Final Report of the Committee on Federal Liens," approved February 23, 1959.

The Senate Committee on Finance did not hold hearings on H.R. 11256.

Documents incorporated in the hearings are not set out separately; however, appropriate cross-references are made.

The material contained herein has been inserted in toto; therefore, the original pagination appears in all cases.

In order to facilitate the utilization of the House and Senate floor debates on H.R. 11256, this document contains an alphabetical listing of Members of Congress, with cross-references to their remarks on the floor of the House or the Senate, as the case may be. In this connection, however, the page numbers refer to the pages of this document. The floor debates are taken from the Congressional Record for the date indicated, The page numbers of the daily Congressional Record are bracketed.

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CHRONOLOGICAL HISTORY OF THE LEGISLATION

House bill number	H.R. 11256.
(An identical bill, H.R. 11290, was introduced by Congressman John W. Byrnes of Wisconsin).	
Date bill introduced in House of Representatives	Sept. 25, 1965.
(H.R. 11290 introduced on September 27, 1965).	
Date of public hearings before the House Committee on Ways and Means	Mar. 2, 1966.
Date bill reported by Committee on Ways and Means	Aug. 24, 1966.
House report number	H. Rept. 1884.
Date rule obtained—H. Res. 1005, providing for a closed rule, waiving points of order against, 4 hours of debate, committee amendments, and 1 motion to recommit	Sept. 1, 1966.
Date of House floor debate and final passage	Sept. 12, 1966.
Rule: H. Res. 1005 adopted by a record vote—243 yeas, 9 nays, 180 not voting.	
Final passage: Passed by voice vote.	
Date reported by Senate Committee on Finance	Oct. 11, 1966.
Senate report number	S. Rept. 1708.
Date of Senate floor debate and final passage	Oct. 13, 1966.
Final passage: Passed by voice vote.	
Date House agreed to Senate amendments	Oct. 20, 1966.
Date signed by the President	Nov. 2, 1966.
Public law number	Public Law 89–719.

ALPHABETICAL LISTING OF MEMBERS OF CONGRESS, WITH CROSS-REFERENCES TO FLOOR DEBATES

A. House Floor Debate on Bill

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SECTION 1

PUBLIC LAW 89-719

Public Law 89-719
89th Congress, H. R. 11256
November 2, 1966

An Act

80 STAT. 1125

To amend the Internal Revenue Code of 1954 with respect to the priority and effect of Federal tax liens and levies, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Federal Tax Lien Act of 1966.

SECTION 1. SHORT TITLE, ETC.

(a) Short Title.—This Act may be cited as the "Federal Tax Lien Act of 1966".

(b) Amendment of 1954 Code.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

68A Stat. 3. 26 USC 1 et seq.

TITLE I—PRIORITY AND EFFECT OF TAX LIENS AND LEVIES

SEC. 101. PRIORITY OF LIENS.

(a) Amendment of Section 6323.—Section 6323 (relating to validity of tax liens against mortgagees, pledgees, purchasers, and judgment creditors) is amended to read as follows:

"SEC. 6323. VALIDITY AND PRIORITY AGAINST CERTAIN PERSONS.

"(a) Purchases, Holders of Security Interests, Mechanic's Lienors, and Judgment Lien Creditors.—The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary or his delegate.

"(b) Protection for Certain Interests Even Though Notice Filed.—Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid—

"(1) Securities.—With respect to a security (as defined in subsection (h) (4))—

"(A) as against a purchaser of such security who at the time of purchase did not have actual notice or knowledge of the existence of such lien; and

"(B) as against a holder of a security interest in such security who, at the time such interest came into existence, did not have actual notice or knowledge of the existence of such lien.

"(2) Motor vehicles.—With respect to a motor vehicle (as defined in subsection (h)(3)), as against a purchaser of such motor vehicle, if—

"(A) at the time of the purchase such purchaser did not have actual notice or knowledge of the existence of such lien, and

"(B) before the purchaser obtains such notice or knowledge, he has acquired possession of such motor vehicle and has not thereafter relinquished possession of such motor vehicle to the seller or his agent.

"(3) Personal property purchased at retail.—With respect to tangible personal property purchased at retail, as against a purchaser in the ordinary course of the seller's trade or business, unless at the time of such purchase such purchaser intends such

purchase to (or knows such purchase will) hinder, evade, or defeat the collection of any tax under this title.

"(4) PERSONAL PROPERTY PURCHASED IN CASUAL SALE.—With respect to household goods, personal effects, or other tangible personal property described in section 6334(a) purchased (not for resale) in a casual sale for less than $250, as against the purchaser, but only if such purchaser does not have actual notice or knowledge (A) of the existence of such lien, or (B) that this sale is one of a series of sales.

Post, p. 1137. 26 USC 6334.

"(5) PERSONAL PROPERTY SUBJECT TO POSSESSORY LIEN.—With respect to tangible personal property subject to a lien under local law securing the reasonable price of the repair or improvement of such property, as against a holder of such a lien, if such holder is, and has been, continuously in possession of such property from the time such lien arose.

"(6) REAL PROPERTY TAX AND SPECIAL ASSESSMENT LIENS.—With respect to real property, as against a holder of a lien upon such property, if such lien is entitled under local law to priority over security interests in such property which are prior in time, and such lien secures payment of—

"(A) a tax of general application levied by any taxing authority based upon the value of such property;

"(B) a special assessment imposed directly upon such property by any taxing authority, if such assessment is imposed for the purpose of defraying the cost of any public improvement; or

"(C) charges for utilities or public services furnished to such property by the United States, a State or political subdivision thereof, or an instrumentality of any one or more of the foregoing.

"(7) RESIDENTIAL PROPERTY SUBJECT TO A MECHANIC'S LIEN FOR CERTAIN REPAIRS AND IMPROVEMENTS.—With respect to real property subject to a lien for repair or improvement of a personal residence (containing not more than four dwelling units) occupied by the owner of such residence, as against a mechanic's lienor, but only if the contract price on the contract with the owner is not more than $1,000.

"(8) ATTORNEYS' LIENS.—With respect to a judgment or other amount in settlement of a claim or of a cause of action, as against an attorney who, under local law, holds a lien upon or a contract enforcible against such judgment or amount, to the extent of his reasonable compensation for obtaining such judgment or procuring such settlement, except that this paragraph shall not apply to any judgment or amount in settlement of a claim or of a cause of action against the United States to the extent that the United States offsets such judgment or amount against any liability of the taxpayer to the United States.

"(9) CERTAIN INSURANCE CONTRACTS.—With respect to a life insurance, endowment, or annuity contract, as against the organization which is the insurer under such contract, at any time—

"(A) before such organization had actual notice or knowledge of the existence of such lien;

"(B) after such organization had such notice or knowledge, with respect to advances required to be made automatically to maintain such contract in force under an agreement entered into before such organization had such notice or knowledge; or

"(C) after satisfaction of a levy pursuant to section 6332(b), unless and until the Secretary or his delegate

Post, p. 1136.

delivers to such organization a notice, executed after the date of such satisfaction, of the existence of such lien.

"(10) Passbook loans.—With respect to a savings deposit, share, or other account, evidenced by a passbook, with an institution described in section 581 or 591, to the extent of any loan made by such institution without actual notice or knowledge of the existence of such lien, as against such institution, if such loan is secured by such account and if such institution has been continuously in possession of such passbook from the time the loan is made. 68A Stat. 202. 26 USC 581, 591.

"(c) Protection for Certain Commercial Transactions Financing Agreements, etc.—

"(1) In general.—To the extent provided in this subsection, even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing but which—

"(A) is in qualified property covered by the terms of a written agreement entered into before tax lien filing and constituting—

"(i) a commercial transactions financing agreement,

"(ii) a real property construction or improvement financing agreement, or

"(iii) an obligatory disbursement agreement, and

"(B) is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

"(2) Commercial transactions financing agreement.—For purposes of this subsection—

"(A) Definition.—The term 'commercial transactions financing agreement' means an agreement (entered into by a person in the course of his trade or business)—

"(i) to make loans to the taxpayer to be secured by commercial financing security acquired by the taxpayer in the ordinary course of his trade or business, or

"(ii) to purchase commercial financing security (other than inventory) acquired by the taxpayer in the ordinary course of his trade or business;

but such an agreement shall be treated as coming within the term only to the extent that such loan or purchase is made before the 46th day after the date of tax lien filing or (if earlier) before the lender or purchaser had actual notice or knowledge of such tax lien filing.

"(B) Limitation on qualified property.—The term 'qualified property', when used with respect to a commercial transactions financing agreement, includes only commercial financing security acquired by the taxpayer before the 46th day after the date of tax lien filing.

"(C) Commercial financing security defined.—The term 'commercial financing security' means (i) paper of a kind ordinarily arising in commercial transactions, (ii) accounts receivable, (iii) mortgages on real property, and (iv) inventory.

"(D) Purchaser treated as acquiring security interest.—A person who satisfies subparagraph (A) by reason of clause (ii) thereof shall be treated as having acquired a security interest in commercial financing security.

"(3) Real property construction or improvement financing agreement.—For purposes of this subsection—

"(A) DEFINITION.—The term 'real property construction or improvement financing agreement' means an agreement to make cash disbursements to finance—

"(i) the construction or improvement of real property,

"(ii) a contract to construct or improve real property, or

"(iii) the raising or harvesting of a farm crop or the raising of livestock or other animals.

For purposes of clause (iii), the furnishing of goods and services shall be treated as the disbursement of cash.

"(B) LIMITATION ON QUALIFIED PROPERTY.—The term 'qualified property', when used with respect to a real property construction or improvement financing agreement, includes only—

"(i) in the case of subparagraph (A)(i), the real property with respect to which the construction or improvement has been or is to be made,

"(ii) in the case of subparagraph (A)(ii), the proceeds of the contract described therein, and

68A Stat. 779.
26 USC 6321.

"(iii) in the case of subparagraph (A)(iii), property subject to the lien imposed by section 6321 at the time of tax lien filing and the crop or the livestock or other animals referred to in subparagraph (A)(iii).

"(4) OBLIGATORY DISBURSEMENT AGREEMENT.—For purposes of this subsection—

"(A) DEFINITION.—The term 'obligatory disbursement agreement' means an agreement (entered into by a person in the course of his trade or business) to make disbursements, but such an agreement shall be treated as coming within the term only to the extent of disbursements which are required to be made by reason of the intervention of the rights of a person other than the taxpayer.

"(B) LIMITATION ON QUALIFIED PROPERTY.—The term 'qualified property', when used with respect to an obligatory disbursement agreement, means property subject to the lien imposed by section 6321 at the time of tax lien filing and (to the extent that the acquisition is directly traceable to the disbursements referred to in subparagraph (A)) property acquired by the taxpayer after tax lien filing.

"(C) SPECIAL RULES FOR SURETY AGREEMENTS.—Where the obligatory disbursement agreement is an agreement ensuring the performance of a contract between the taxpayer and another person—

"(i) the term 'qualified property' shall be treated as also including the proceeds of the contract the performance of which was ensured, and

"(ii) if the contract the performance of which was ensured was a contract to construct or improve real property, to produce goods, or to furnish services, the term 'qualified property' shall be treated as also including any tangible personal property used by the taxpayer in the performance of such ensured contract.

"(d) 45-DAY PERIOD FOR MAKING DISBURSEMENTS.—Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing by reason of disbursements made before the 46th day after the date of tax lien filing, or (if earlier) before the person making such disbursements had actual notice or knowledge of tax lien filing, but only if such security interest—

"(1) is in property (A) subject, at the time of tax lien filing, to the lien imposed by section 6321, and (B) covered by the terms of a written agreement entered into before tax lien filing, and 68A Stat. 779. 26 USC 6321.

"(2) is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

"(e) PRIORITY OF INTEREST AND EXPENSES.—If the lien imposed by section 6321 is not valid as against a lien or security interest, the priority of such lien or security interest shall extend to—

"(1) any interest or carrying charges upon the obligation secured,

"(2) the reasonable charges and expenses of an indenture trustee or agent holding the security interest for the benefit of the holder of the security interest,

"(3) the reasonable expenses, including reasonable compensation for attorneys, actually incurred in collecting or enforcing the obligation secured,

"(4) the reasonable costs of insuring, preserving, or repairing the property to which the lien or security interest relates,

"(5) the reasonable costs of insuring payment of the obligation secured, and

"(6) amounts paid to satisfy any lien on the property to which the lien or security interest relates, but only if the lien so satisfied is entitled to priority over the lien imposed by section 6321,

to the extent that, under local law, any such item has the same priority as the lien or security interest to which it relates.

"(f) PLACE FOR FILING NOTICE; FORM.—

"(1) PLACE FOR FILING.—The notice referred to in subsection (a) shall be filed—

"(A) UNDER STATE LAWS.—

"(i) REAL PROPERTY.—In the case of real property, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated; and

"(ii) PERSONAL PROPERTY.—In the case of personal property, whether tangible or intangible, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated; or

"(B) WITH CLERK OF DISTRICT COURT.—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State has not by law designated one office which meets the requirements of subparagraph (A); or

"(C) WITH RECORDER OF DEEDS OF THE DISTRICT OF COLUMBIA.—In the office of the Recorder of Deeds of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

"(2) SITUS OF PROPERTY SUBJECT TO LIEN.—For purposes of paragraph (1), property shall be deemed to be situated—

"(A) REAL PROPERTY.—In the case of real property, at its physical location; or

"(B) PERSONAL PROPERTY.—In the case of personal property, whether tangible or intangible, at the residence of the taxpayer at the time the notice of lien is filed.

For purposes of paragraph (2)(B), the residence of a corporation or partnership shall be deemed to be the place at which the

principal executive office of the business is located, and the residence of a taxpayer whose residence is without the United States shall be deemed to be in the District of Columbia.

"(3) FORM.—The form and content of the notice referred to in subsection (a) shall be prescribed by the Secretary or his delegate. Such notice shall be valid notwithstanding any other provision of law regarding the form or content of a notice of lien.

"(g) REFILING OF NOTICE.—For purposes of this section—

"(1) GENERAL RULE.—Unless notice of lien is refiled in the manner prescribed in paragraph (2) during the required refiling period, such notice of lien shall be treated as filed on the date on which it is filed (in accordance with subsection (f)) after the expiration of such refiling period.

"(2) PLACE FOR FILING.—A notice of lien refiled during the required refiling period shall be effective only—

"(A) if such notice of lien is refiled in the office in which the prior notice of lien was filed; and

"(B) in any case in which, 90 days or more prior to the date of a refiling of notice of lien under subparagraph (A), the Secretary or his delegate received written information (in the manner prescribed in regulations issued by the Secretary or his delegate) concerning a change in the taxpayer's residence, if a notice of such lien is also filed in accordance with subsection (f) in the State in which such residence is located.

"(3) REQUIRED REFILING PERIOD.—In the case of any notice of lien, the term 'required refiling period' means—

"(A) the one-year period ending 30 days after the expiration of 6 years after the date of the assessment of the tax, and

"(B) the one-year period ending with the expiration of 6 years after the close of the preceding required refiling period for such notice of lien.

"(4) TRANSITIONAL RULE.—Notwithstanding paragraph (3), if the assessment of the tax was made before January 1, 1962, the first required refiling period shall be the calendar year 1967.

Post, p. 1132.

"(h) DEFINITIONS.—For purposes of this section and section 6324—

"(1) SECURITY INTEREST.—The term 'security interest' means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time (A) if, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien arising out of an unsecured obligation, and (B) to the extent that, at such time, the holder has parted with money or money's worth.

"(2) MECHANIC'S LIENOR.—The term "mechanic's lienor' means any person who under local law has a lien on real property (or on the proceeds of a contract relating to real property) for services, labor, or materials furnished in connection with the construction or improvement of such property. For purposes of the preceding sentence, a person has a lien on the earliest date such lien becomes valid under local law against subsequent purchasers without actual notice, but not before he begins to furnish the services, labor, or materials.

"(3) MOTOR VEHICLE.—The term 'motor vehicle' means a self-propelled vehicle which is registered for highway use under the laws of any State or foreign country.

"(4) SECURITY.—The term 'security' means any bond, debenture, note, or certificate or other evidence of indebtedness, issued

by a corporation or a government or political subdivision thereof, with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

"(5) Tax lien filing.—The term 'tax lien filing' means the filing of notice (referred to in subsection (a)) of the lien imposed by section 6321. 68A Stat. 779. 26 USC 6321.

"(6) Purchaser.—The term 'purchaser' means a person who, for adequate and full consideration in money or money's worth, acquires an interest (other than a lien or security interest) in property which is valid under local law against subsequent purchasers without actual notice. In applying the preceding sentence for purposes of subsection (a) of this section, and for purposes of section 6324— Post, p. 1132.

"(A) a lease of property,

"(B) a written executory contract to purchase or lease property,

"(C) an option to purchase or lease property or any interest therein, or

"(D) an option to renew or extend a lease of property,

which is not a lien or security interest shall be treated as an interest in property.

"(i) Special Rules.—

"(1) Actual notice or knowledge.—For purposes of this subchapter, an organization shall be deemed for purposes of a particular transaction to have actual notice or knowledge of any fact from the time such fact is brought to the attention of the individual conducting such transaction, and in any event from the time such fact would have been brought to such individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routine. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

"(2) Subrogation.—Where, under local law, one person is subrogated to the rights of another with respect to a lien or interest, such person shall be subrogated to such rights for purposes of any lien imposed by section 6321 or 6324.

"(3) Disclosure of amount of outstanding lien.—If a notice of lien has been filed pursuant to subsection (f), the Secretary or his delegate is authorized to provide by regulations the extent to which, and the conditions under which, information as to the amount of the outstanding obligation secured by the lien may be disclosed."

(b) Clerical Amendments.—

(1) The table of sections for subchapter C of chapter 64 is amended by striking out

"Sec. 6323. Validity against mortgagees, pledgees, purchasers, and judgment creditors."

and inserting in lieu thereof

"Sec. 6323. Validity and priority against certain persons."

68A Stat. 189. 26 USC 545.

(2) Section 545(b)(9) is amended by striking out "section 6323(a) (1), (2), or (3)" and inserting in lieu thereof "section 6323(f)".

SEC. 102. SPECIAL LIENS FOR ESTATE AND GIFT TAXES.

Section 6324 (relating to special liens for estate and gift taxes) is amended to read as follows:

"SEC. 6324. SPECIAL LIENS FOR ESTATE AND GIFT TAXES.

"(a) LIENS FOR ESTATE TAX.—Except as otherwise provided in subsection (c)—

"(1) UPON GROSS ESTATE.—Unless the estate tax imposed by chapter 11 is sooner paid in full, or becomes unenforceable by reason of lapse of time, it shall be a lien upon the gross estate of the decedent for 10 years from the date of death, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien.

26 USC 2001-2209.

"(2) LIABILITY OF TRANSFEREES AND OTHERS.—If the estate tax imposed by chapter 11 is not paid when due, then the spouse, transferee, trustee (except the trustee of an employees' trust which meets the requirements of section 401(a)), surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042, inclusive, to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax. Any part of such property transferred by (or transferred by a transferee of) such spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary, to a purchaser or holder of a security interest shall be divested of the lien provided in paragraph (1) and a like lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary, or transferee of any such person, except any part transferred to a purchaser or a holder of a security interest.

"(3) CONTINUANCE AFTER DISCHARGE OF EXECUTOR.—The provisions of section 2204 (relating to discharge of executor from personal liability) shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless such part of the gross estate (or any interest therein) has been transferred to a purchaser or a holder of a security interest, in which case such part (or such interest) shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser or holder of a security interest, by the heirs, legatees, devisees, or distributees.

26 USC 2501-2524.

"(b) LIEN FOR GIFT TAX.—Except as otherwise provided in subsection (c), unless the gift tax imposed by chapter 12 is sooner paid in full or becomes unenforceable by reason of lapse of time, such tax shall be a lien upon all gifts made during the calendar year, for 10 years from the date the gifts are made. If the tax is not paid when due, the donee of any gift shall be personally liable for such tax to the extent of the value of such gift. Any part of the property comprised in the gift transferred by the donee (or by a transferee of the donee) to a purchaser or holder of a security interest shall be divested of the lien imposed by this subsection and such lien, to the extent of the value of such gift, shall attach to all the property (including after-acquired

property) of the donee (or the transferee) except any part transferred to a purchaser or holder of a security interest.

"(c) Exceptions.—

"(1) The lien imposed by subsection (a) or (b) shall not be valid as against a mechanic's lienor and, subject to the conditions provided by section 6323 (b) (relating to protection for certain interests even though noticed filed), shall not be valid with respect to any lien or interest described in section 6323 (b). Ante, p. 1125.

"(2) If a lien imposed by subsection (a) or (b) is not valid as against a lien or security interest, the priority of such lien or security interest shall extend to any item described in section 6323 (e) (relating to priority of interest and expenses) to the extent that, under local law, such item has the same priority as the lien or security interest to which it relates."

SEC. 103. CERTIFICATES RELATING TO LIENS.

(a) Amendment of Section 6325.—Section 6325 (relating to release of lien or partial discharge of property) is amended to read as follows: 68A Stat. 781. 26 USC 6325.

"SEC. 6325. RELEASE OF LIEN OR DISCHARGE OF PROPERTY.

"(a) Release of Lien.—Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of release of any lien imposed with respect to any internal revenue tax if—

"(1) Liability satisfied or unenforceable.—The Secretary or his delegate finds that the liability for the amount assessed, together with all interest in respect thereof, has been fully satisfied or has become legally unenforceable; or

"(2) Bond accepted.—There is furnished to the Secretary or his delegate and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified by such regulations.

"(b) Discharge of Property.—

"(1) Property double the amount of the liability.—Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to any lien imposed under this chapter if the Secretary or his delegate finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the unsatisfied liability secured by such lien and the amount of all other liens upon such property which have priority over such lien.

"(2) Part payment; interest of United States valueless.—Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to the lien if—

"(A) there is paid over to the Secretary or his delegate in partial satisfaction of the liability secured by the lien an amount determined by the Secretary or his delegate, which shall not be less than the value, as determined by the Secretary or his delegate, of the interest of the United States in the part to be so discharged, or

"(B) the Secretary or his delegate determines at any time that the interest of the United States in the part to be so discharged has no value.

In determining the value of the interest of the United States in the part to be so discharged, the Secretary or his delegate shall give consideration to the value of such part and to such liens thereon as have priority over the lien of the United States.

"(3) SUBSTITUTION OF PROCEEDS OF SALE.—Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to the lien if such part of the property is sold and, pursuant to an agreement with the Secretary or his delegate, the proceeds of such sale are to be held, as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as such liens and claims had with respect to the discharged property.

"(c) ESTATE OR GIFT TAX.—Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any or all of the property subject to any lien imposed by section 6324 if the Secretary or his delegate finds that the liability secured by such lien has been fully satisfied or provided for.

Ante, p. 1132.

"(d) SUBORDINATION OF LIEN.—Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of subordination of any lien imposed by this chapter upon any part of the property subject to such lien if—

"(1) there is paid over to the Secretary or his delegate an amount equal to the amount of the lien or interest to which the certificate subordinates the lien of the United States, or

"(2) the Secretary or his delegate believes that the amount realizable by the United States from the property to which the certificate relates, or from any other property subject to the lien, will ultimately be increased by reason of the issuance of such certificate and that the ultimate collection of the tax liability will be facilitated by such subordination.

"(e) NONATTACHMENT OF LIEN.—If the Secretary or his delegate determines that, because of confusion of names or otherwise, any person (other than the person against whom the tax was assessed) is or may be injured by the appearance that a notice of lien filed under section 6323 refers to such person, the Secretary or his delegate may issue a certificate that the lien does not attach to the property of such person.

Ante, p. 1125.

"(f) EFFECT OF CERTIFICATE.—

"(1) CONCLUSIVENESS.—Except as provided in paragraphs (2) and (3), if a certificate is issued pursuant to this section by the Secretary or his delegate and is filed in the same office as the notice of lien to which it relates (if such notice of lien has been filed) such certificate shall have the following effect:

"(A) in the case of a certificate of release, such certificate shall be conclusive that the lien referred to in such certificate is extinguished;

"(B) in the case of a certificate of discharge, such certificate shall be conclusive that the property covered by such certificate is discharged from the lien;

"(C) in the case of a certificate of subordination, such certificate shall be conclusive that the lien or interest to which the lien of the United States is subordinated is superior to the lien of the United States; and

"(D) in the case of a certificate of nonattachment, such certificate shall be conclusive that the lien of the United States does not attach to the property of the person referred to in such certificate.

"(2) Revocation of certificate of release or nonattachment.—If the Secretary or his delegate determines that a certificate of release or nonattachment of a lien imposed by section 6321 was issued erroneously or improvidently, or if a certificate of release of such lien was issued pursuant to a collateral agreement entered into in connection with a compromise under section 7122 which has been breached, and if the period of limitation on collection after assessment has not expired, the Secretary or his delegate may revoke such certificate and reinstate the lien— 68A Stat. 779. 26 USC 6321.

"(A) by mailing notice of such revocation to the person against whom the tax was assessed at his last known address, and

"(B) by filing notice of such revocation in the same office in which the notice of lien to which it relates was filed (if such notice of lien had been filed).

Such reinstated lien (i) shall be effective on the date notice of revocation is mailed to the taxpayer in accordance with the provisions of subparagraph (A), but not earlier than the date on which any required filing of notice of revocation is filed in accordance with the provisions of subparagraph (B), and (ii) shall have the same force and effect (as of such date), until the expiration of the period of limitation on collection after assessment, as a lien imposed by section 6321 (relating to lien for taxes).

"(3) Certificates void under certain conditions.—Notwithstanding any other provision of this subtitle, any lien imposed by this chapter shall attach to any property with respect to which a certificate of discharge has been issued if the person liable for the tax reacquires such property after such certificate has been issued.

"(g) Filing of Certificates and Notices.—If a certificate or notice issued pursuant to this section may not be filed in the office designated by State law in which the notice of lien imposed by section 6321 is filed, such certificate or notice shall be effective if filed in the office of the clerk of the United States district court for the judicial district in which such office is situated.

"(h) Cross Reference.—

"For provisions relating to bonds, see chapter 73 (sec. 7101 and following)."

(b) Clerical Amendment.—The table of sections for subchapter C of chapter 64 is amended by striking out

"Sec. 6325. Release of lien or partial discharge of property."

and inserting in lieu thereof

"Sec. 6325. Release of lien or discharge of property."

SEC. 104. SEIZURE OF PROPERTY FOR COLLECTION OF TAXES.

(a) Effect of Levy.—Section 6331(b) (relating to seizure and sale of property by levy and distraint) is amended by inserting after the first sentence the following new sentence: "A levy shall extend only to property possessed and obligations existing at the time thereof."

(b) Surrender of Property Subject to Levy.—Section 6332 relating to surrender of property subject to levy) is amended—

(1) by striking out "Any person" in subsection (a) and inserting in lieu thereof "Except as otherwise provided in subsection (b), any person";

(2) by amending subsection (b) to read as follows:

"(b) SPECIAL RULE FOR LIFE INSURANCE AND ENDOWMENT CONTRACTS.—

"(1) IN GENERAL.—A levy on an organization with respect to a life insurance or endowment contract issued by such organization shall, without necessity for the surrender of the contract document, constitute a demand by the Secretary or his delegate for payment of the amount described in paragraph (2) and the exercise of the right of the person against whom the tax is assessed to the advance of such amount. Such organization shall pay over such amount 90 days after service of notice of levy. Such notice shall include a certification by the Secretary or his delegate that a copy of such notice has been mailed to the person against whom the tax is assessed at his last known address.

"(2) SATISFACTION OF LEVY.—Such levy shall be deemed to be satisfied if such organization pays over to the Secretary or his delegate the amount which the person against whom the tax is assessed could have had advanced to him by such organization on the date prescribed in paragraph (1) for the satisfaction of such levy, increased by the amount of any advance (including contractual interest thereon) made to such person on or after the date such organization had actual notice or knowledge (within the meaning of section 6323(i)(1)) of the existence of the lien with respect to which such levy is made, other than an advance (including contractual interest thereon) made automatically to maintain such contract in force under an agreement entered into before such organization had such notice or knowledge.

Ante, p. 1131.

"(3) ENFORCEMENT PROCEEDINGS.—The satisfaction of a levy under paragraph (2) shall be without prejudice to any civil action for the enforcement of any lien imposed by this title with respect to such contract.";

(3) by redesignating subsection (c) as subsection (e); and

(4) by inserting after subsection (b) the following new subsections:

"(c) ENFORCEMENT OF LEVY.—

"(1) EXTENT OF PERSONAL LIABILITY.—Any person who fails or refuses to surrender any property or rights to property, subject to levy, upon demand by the Secretary or his delegate, shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of taxes for the collection of which such levy has been made, together with costs and interest on such sum at the rate of 6 percent per annum from the date of such levy. Any amount (other than costs) recovered under this paragraph shall be credited against the tax liability for the collection of which such levy was made.

"(2) PENALTY FOR VIOLATION.—In addition to the personal liability imposed by paragraph (1), if any person required to surrender property or rights to property fails or refuses to surrender such property or rights to property without reasonable cause, such person shall be liable for a penalty equal to 50 percent of the amount recoverable under paragraph (1). No part of such penalty shall be credited against the tax liability for the collection of which such levy was made.

"(d) EFFECT OF HONORING LEVY.—Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the Secretary or his delegate, surrenders such property or rights to property (or discharges such obligation) to the Secretary or his delegate (or

who pays a liability under subsection (c)(1)) shall be discharged from any obligation or liability to the delinquent taxpayer with respect to such property or rights to property arising from such surrender or payment. In the case of a levy which is satisfied pursuant to subsection (b), such organization shall also be discharged from any obligation or liability to any beneficiary arising from such surrender or payment."

(c) PROPERTY EXEMPT FROM LEVY.—Section 6334(a) (relating to enumeration of property exempt from levy) is amended— 68A Stat. 784; 72 Stat. 1047; 79 Stat. 170. 26 USC 6334.

(1) by striking out "or Territory" in paragraph (4); and

(2) by adding at the end thereof the following new paragraphs:

"(6) CERTAIN ANNUITY AND PENSION PAYMENTS.—Annuity or pension payments under the Railroad Retirement Act, benefits under the Railroad Unemployment Insurance Act, special pension payments received by a person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor roll (38 U.S.C. 562), and annuities based on retired or retainer pay under chapter 73 of title 10 of the United States Code. Ante, p. 1079; 50 Stat. 307. 45 USC 228a-228s-2. 52 Stat. 1094. 45 USC 367. 72 Stat. 1140. 70A Stat. 108.

"(7) WORKMEN'S COMPENSATION.—Any amount payable to an individual as workmen's compensation (including any portion thereof payable with respect to dependents) under a workmen's compensation law of the United States, any State, the District of Columbia, or the Commonwealth of Puerto Rico."

(d) PUBLICATION OF NOTICE OF SALE.—The first sentence of section 6335 (b) (relating to notice of sale of seized property) is amended to read as follows: "The Secretary or his delegate shall as soon as practicable after the seizure of the property give notice to the owner, in the manner prescribed in subsection (a), and shall cause a notification to be published in some newspaper published or generally circulated within the county wherein such seizure is made, or if there be no newspaper published or generally circulated in such county, shall post such notice at the post office nearest the place where the seizure is made, and in not less than two other public places."

(e) REDEMPTION PERIOD.—Paragraph (1) of section 6337(b) (relating to period of redemption of real estate after sale) is amended by striking out "1 year" and inserting in lieu thereof "120 days".

(f) PREPARATION OF DEED.—Section 6338(c) (relating to real property purchased by United States) is amended to read as follows:

"(c) REAL PROPERTY PURCHASED BY UNITED STATES.—If real property is declared purchased by the United States at a sale pursuant to section 6335, the Secretary or his delegate shall at the proper time execute a deed therefor, and without delay cause such deed to be duly recorded in the proper registry of deeds."

(g) DISCHARGE OF JUNIOR ENCUMBRANCES.—Section 6339 (relating to legal effect of certificate of sale of personal property and deed of real property) is amended by adding at the end thereof the following new subsections:

"(c) EFFECT OF JUNIOR ENCUMBRANCES.—A certificate of sale of personal property given or a deed to real property executed pursuant to section 6338 shall discharge such property from all liens, encumbrances, and titles over which the lien of the United States with respect to which the levy was made had priority.

"(d) CROSS REFERENCES.—

"(1) For distribution of surplus proceeds, see section 6342(b).

"(2) For judicial procedure with respect to surplus proceeds, see section 7426(a)(2)."

(h) APPLICATION OF PROCEEDS OF LEVY AND SALE.—Subsection (a) of section 6342 (relating to collection of liability) is amended—

(1) by striking out so much thereof as precedes paragraph (1) and inserting in lieu thereof

"(a) COLLECTION OF LIABILITY.—Any money realized by proceedings under this subchapter (whether by seizure, by surrender under section 6332 (except pursuant to subsection (c) (2) thereof), or by sale of seized property) or by sale of property redeemed by the United States (if the interest of the United States in such property was a lien arising under the provisions of this title) shall be applied as follows:";

Ante, p. 1136.

(2) by striking out "under this subchapter" in paragraph (1); and

(3) by adding "or the sale was conducted" after "levy was made" in paragraph (3).

68A Stat. 789. 26 USC 6343.

(i) RETURN OF PROPERTY.—Section 6343 (relating to authority to release levy) is amended—

(1) by striking out the heading of such section and inserting in lieu thereof the following:

"SEC. 6343. AUTHORITY TO RELEASE LEVY AND RETURN PROPERTY.";

(2) by striking out "It shall be" and inserting in lieu thereof "(a) RELEASE OF LEVY.—It shall be"; and

(3) by adding at the end thereof the following new subsection:

"(b) RETURN OF PROPERTY.—If the Secretary or his delegate determines that property has been wrongfully levied upon, it shall be lawful for the Secretary or his delegate to return—

"(1) the specific property levied upon,

"(2) an amount of money equal to the amount of money levied upon, or

"(3) an amount of money equal to the amount of money received by the United States from a sale of such property.

Property may be returned at any time. An amount equal to the amount of money levied upon or received from such sale may be returned at any time before the expiration of 9 months from the date of such levy. For purposes of paragraph (3), if property is declared purchased by the United States at a sale pursuant to section 6335(e) (relating to manner and conditions of sale), the United States shall be treated as having received an amount of money equal to the minimum price determined pursuant to such section or (if larger) the amount received by the United States from the resale of such property."

(j) CLERICAL AMENDMENT.—The table of sections for subchapter D of chapter 64 is amended by striking out—

"Sec. 6343. Authority to release levy."

and inserting in lieu thereof

"Sec. 6343. Authority to release levy and return property."

SEC. 105. LIABILITY FOR WITHHELD TAXES.

26 USC 3501-3504.

(a) EFFECT ON THIRD PARTIES.—Chapter 25 (relating to general provisions relating to employment taxes) is amended by adding at the end thereof the following new section:

"SEC. 3505. LIABILITY OF THIRD PARTIES PAYING OR PROVIDING FOR WAGES.

"(a) DIRECT PAYMENT BY THIRD PARTIES.—For purposes of sections 3102, 3202, 3402, and 3403, if a lender, surety, or other person, who is not an employer under such sections with respect to an employee or group of employees, pays wages directly to such an employee or group of employees, employed by one or more employers, or to an

agent on behalf of such employee or employees, such lender, surety, or other person shall be liable in his own person and estate to the United States in a sum equal to the taxes (together with interest) required to be deducted and withheld from such wages by such employer.

"(b) PERSONAL LIABILITY WHERE FUNDS ARE SUPPLIED.—If a lender, surety, or other person supplies funds to or for the account of an employer for the specific purpose of paying wages of the employees of such employer, with actual notice or knowledge (within the meaning of section 6323(i)(1)) that such employer does not intend to or will not be able to make timely payment or deposit of the amounts of tax required by this subtitle to be deducted and withheld by such employer from such wages, such lender, surety, or other person shall be liable in his own person and estate to the United States in a sum equal to the taxes (together with interest) which are not paid over to the United States by such employer with respect to such wages. However, the liability of such lender, surety, or other person shall be limited to an amount equal to 25 percent of the amount so supplied to or for the account of such employer for such purpose. Ante, p. 1131.

"(c) EFFECT OF PAYMENT.—Any amounts paid to the United States pursuant to this section shall be credited against the liability of the employer."

(b) PERFORMANCE BONDS OF CONTRACTORS FOR PUBLIC BUILDINGS OR WORKS.—The first section of the Act entitled "An Act requiring contracts for the construction, alteration, and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by an additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said public buildings or public work", approved August 24, 1935 (49 Stat. 793; 40 U.S.C. 270a), is amended by adding at the end thereof the following new subsection:

"(d) Every performance bond required under this section shall specifically provide coverage for taxes imposed by the United States which are collected, deducted, or withheld from wages paid by the contractor in carrying out the contract with respect to which such bond is furnished. However, the United States shall give the surety or sureties on such bond written notice, with respect to any such unpaid taxes attributable to any period, within ninety days after the date when such contractor files a return for such period, except that no such notice shall be given more than one hundred and eighty days from the date when a return for the period was required to be filed under the Internal Revenue Code of 1954. No suit on such bond for such taxes shall be commenced by the United States unless notice is given as provided in the preceding sentence, and no such suit shall be commenced after the expiration of one year after the day on which such notice is given."

(c) CLERICAL AMENDMENT.—The table of sections for chapter 25 is amended by adding at the end thereof the following:

"Sec. 3505. Liability of third parties paying or providing for wages."

SEC. 106. SUSPENSION OF RUNNING OF PERIOD OF LIMITATION.

(a) ASSETS OF ESTATE OF DECEDENT OR INCOMPETENT.—Section 6503(b) (relating to assets of taxpayer in control or custody of court) is amended by striking out "(other than the estate of a decedent or of an incompetent)" and "or Territory". 68A Stat. 806. 26 USC 6503.

(b) COLLECTION HINDERED BY ABSENCE OF TAXPAYER.—Section 6503(c) (relating to location of property outside the United States or

removal of property from the United States) is amended to read as follows:

"(c) Taxpayer Outside United States.—The running of the period of limitations on collection after assessment prescribed in section 6502 shall be suspended for the period during which the taxpayer is outside the United States if such period of absence is for a continuous period of at least 6 months. If the preceding sentence applies and at the time of the taxpayer's return to the United States the period of limitations on collection after assessment prescribed in section 6502 would expire before the expiration of 6 months from the date of his return, such period shall not expire before the expiration of such 6 months."

68A Stat. 806.
26 USC 6502.

(c) Wrongful Seizure of Property of Third Parties.—Section 6503 (relating to suspension of running of period of limitation) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

70 Stat. 1075; Ante, p. 104.

"(g) Wrongful Seizure of Property of Third Party.—The running of the period of limitations on collection after assessment prescribed in section 6502 shall be suspended for a period equal to the period from the date property (including money) of a third party is wrongfully seized or received by the Secretary or his delegate to the date the Secretary or his delegate returns property pursuant to section 6343(b) or the date on which a judgment secured pursuant to section 7426 with respect to such property becomes final, and for 30 days thereafter. The running of the period of limitations on collection after assessment shall be suspended under this subsection only with respect to the amount of such assessment equal to the amount of money or the value of specific property returned."

Ante, p. 1138.
Post, p. 1143.

SEC. 107. PROCEEDINGS WHERE UNITED STATES HAS TITLE TO PROPERTY.

(a) Action To Quiet Title.—Section 7402 (relating to jurisdiction of district courts) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) To Quiet Title.—The United States district courts shall have jurisdiction of any action brought by the United States to quiet title to property if the title claimed by the United States to such property was derived from enforcement of a lien under this title."

(b) Sale Bids.—Section 7403(c) (relating to adjudication and decree) is amended by adding at the end thereof the following new sentence: "If the property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of such lien with expenses of sale, as the Secretary or his delegate directs."

SEC. 108. INTERVENTION BY UNITED STATES.

26 USC 7424.

Section 724 (relating to civil action to clear title to property) is amended to read as follows:

"SEC. 7424. INTERVENTION.

"If the United States is not a party to a civil action or suit, the United States may intervene in such action or suit to assert any lien arising under this title on the property which is the subject of such action or suit. The provisions of section 2410 of title 28 of the United States Code (except subsection (b)) and of section 1444 of title 28 of the United States Code shall apply in any case in which the United States intervenes as if the United States had originally been named a defendant in such action or suit. In any case in which the application of the United States to intervene is denied, the adjudication in such civil action or suit shall have no effect upon such lien."

Post, p. 1147.
62 Stat. 938.

SEC. 109. DISCHARGE OF LIENS HELD BY UNITED STATES.

Subchapter B of chapter 76 (relating to proceedings by taxpayers) is amended by redesignating section 7425 as section 7427 and by inserting after section 7424 the following new section: 68A Stat. 876. 26 USC 7421-7425.

"SEC. 7425. DISCHARGE OF LIENS.

"(a) JUDICIAL PROCEEDINGS.—If the United States is not joined as a party, a judgment in any civil action or suit described in subsection (a) of section 2410 of title 28 of the United States Code, or a judicial sale pursuant to such a judgment, with respect to property on which the United States has or claims a lien under the provisions of this title— Post, p. 1147.

"(1) shall be made subject to and without disturbing the lien of the United States, if notice of such lien has been filed in the place provided by law for such filing at the time such action or suit is commenced, or

"(2) shall have the same effect with respect to the discharge or divestment of such lien of the United States as may be provided with respect to such matters by the local law of the place where such property is situated, if no notice of such lien has been filed in the place provided by law for such filing at the time such action or suit is commenced or if the law makes no provision for such filing.

If a judicial sale of property pursuant to a judgment in any civil action or suit to which the United States is not a party discharges a lien of the United States arising under the provisions of this title, the United States may claim, with the same priority as its lien had against the property sold, the proceeds (exclusive of costs) of such sale at any time before the distribution of such proceeds is ordered.

"(b) OTHER SALES.—Notwithstanding subsection (a) a sale of property on which the United States has or claims a lien, or a title derived from enforcement of a lien, under the provisions of this title, made pursuant to an instrument creating a lien on such property, pursuant to a confession of judgment on the obligation secured by such an instrument, or pursuant to a nonjudicial sale under a statutory lien on such property—

"(1) shall, except as otherwise provided, be made subject to and without disturbing such lien or title, if notice of such lien was filed or such title recorded in the place provided by law for such filing or recording more than 30 days before such sale and the United States is not given notice of such sale in the manner prescribed in subsection (c) (1); or

"(2) shall have the same effect with respect to the discharge or divestment of such lien or such title of the United States, as may be provided with respect to such matters by the local law of the place where such property is situated, if—

"(A) notice of such lien or such title was not filed or recorded in the place provided by law for such filing more than 30 days before such sale,

"(B) the law makes no provision for such filing, or

"(C) notice of such sale is given in the manner prescribed in subsection (c) (1).

"(c) SPECIAL RULES.—

"(1) NOTICE OF SALE.—Notice of a sale to which subsection (b) applies shall be given (in accordance with regulations prescribed by the Secretary or his delegate) in writing, by registered or certified mail or by personal service, not less than 25 days prior to such sale, to the Secretary or his delegate.

"(2) CONSENT TO SALE.—Notwithstanding the notice requirement of subsection (b) (2) (C), a sale described in subsection (b) of

property shall discharge or divest such property of the lien or title of the United States if the United States consents to the sale of such property free of such lien or title.

"(3) Sale of perishable goods.—Notwithstanding the notice requirement of subsection (b)(2)(C), a sale described in subsection (b) of property liable to perish or become greatly reduced in price or value by keeping, or which cannot be kept without great expense, shall discharge or divest such property of the lien or title of the United States if notice of such sale is given (in accordance with regulations prescribed by the Secretary or his delegate) in writing, by registered or certified mail or by personal service, to the Secretary or his delegate before such sale. The proceeds (exclusive of costs) of such sale shall be held as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as such liens and claims had with respect to the property sold, for not less than 30 days after the date of such sale.

"(d) Redemption by United States.—

"(1) Right to redeem.—In the case of a sale of real property to which subsection (b) applies to satisfy a lien prior to that of the United States, the Secretary or his delegate may redeem such property within the period of 120 days from the date of such sale or the period allowable for redemption under local law, whichever is longer.

"(2) Amount to be paid.—In any case in which the United States redeems real property pursuant to paragraph (1), the amount to be paid for such property shall be the amount prescribed by subsection (d) of section 2410 of title 28 of the United States Code.

Post, p. 1148.

"(3) Certificate of redemption.—

"(A) In general.—In any case in which real property is redeemed by the United States pursuant to this subsection, the Secretary or his delegate shall apply to the officer designated by local law, if any, for the documents necessary to evidence the fact of redemption and to record title to such property in the name of the United States. If no such officer is designated by local law or if such officer fails to issue such documents, the Secretary or his delegate shall execute a certificate of redemption therefor.

"(B) Filing.—The Secretary or his delegate shall, without delay, cause such documents or certificate to be duly recorded in the proper registry of deeds. If the State in which the real property redeemed by the United States is situated has not by law designated an office in which such certificate may be recorded, the Secretary or his delegate shall file such certificate in the office of the clerk of the United States district court for the judicial district in which such property is situated.

"(C) Effect.—A certificate of redemption executed by the Secretary or his delegate shall constitute prima facie evidence of the regularity of such redemption and shall, when recorded, transfer to the United States all the rights, title, and interest in and to such property acquired by the person from whom the United States redeems such property by virtue of the sale of such property."

SEC. 110. PROCEEDINGS BY THIRD PARTIES AGAINST THE UNITED STATES.

(a) Actions by Third Parties.—Subchapter B of chapter 76 (relating to proceedings by taxpayers) is amended by inserting after

section 7425 (as added by section 109 of this Act) the following new section:

"SEC. 7426. CIVIL ACTIONS BY PERSONS OTHER THAN TAXPAYERS.

"(a) ACTIONS PERMITTED.—

"(1) WRONGFUL LEVY.—If a levy has been made on property or property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property and that such property was wrongfully levied upon may bring a civil action against the United States in a district court of the United States. Such action may be brought without regard to whether such property has been surrendered to or sold by the Secretary or his delegate.

"(2) SURPLUS PROCEEDS.—If property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property junior to that of the United States and to be legally entitled to the surplus proceeds of such sale may bring a civil action against the United States in a district court of the United States.

"(3) SUBSTITUTED SALE PROCEEDS.—If property has been sold pursuant to an agreement described in section 6325(b)(3) (relating to substitution of proceeds of sale), any person who claims to be legally entitled to all or any part of the amount held as a fund pursuant to such agreement may bring a civil action against the United States in a district court of the United States. Ante, p. 1133.

"(b) ADJUDICATION.—The district court shall have jurisdiction to grant only such of the following forms of relief as may be appropriate in the circumstances:

"(1) INJUNCTION.—If a levy or sale would irreparably injure rights in property which the court determines to be superior to rights of the United States in such property, the court may grant an injunction to prohibit the enforcement of such levy or to prohibit such sale.

"(2) RECOVERY OF PROPERTY.—If the court determines that such property has been wrongfully levied upon, the court may—

"(A) order the return of specific property if the United States is in possession of such property;

"(B) grant a judgment for the amount of money levied upon; or

"(C) grant a judgment for an amount not exceeding the amount received by the United States from the sale of such property.

For the purposes of subparagraph (C), if the property was declared purchased by the United States at a sale pursuant to section 6335(e) (relating to manner and conditions of sale), the United States shall be treated as having received an amount equal to the minimum price determined pursuant to such section or (if larger) the amount received by the United States from the resale of such property. 68A Stat. 785. 26 USC 6335.

"(3) SURPLUS PROCEEDS.—If the court determines that the interest or lien of any party to an action under this section was transferred to the proceeds of a sale of such property, the court may grant a judgment in an amount equal to all or any part of the amount of the surplus proceeds of such sale.

"(4) SUBSTITUTED SALE PROCEEDS.—If the court determines that a party has an interest in or lien on the amount held as a fund pursuant to an agreement described in section 6325(b)(3) (relat-

ing to substitution of proceeds of sale), the court may grant a judgment in an amount equal to all or any part of the amount of such fund.

"(c) VALIDITY OF ASSESSMENT.—For purposes of an adjudication under this section, the assessment of tax upon which the interest or lien of the United States is based shall be conclusively presumed to be valid.

"(d) LIMITATION ON RIGHTS OF ACTION.—No action may be maintained against any officer or employee of the United States (or former officer or employee) or his personal representative with respect to any acts for which an action could be maintained under this section.

"(e) SUBSTITUTION OF UNITED STATES AS PARTY.—If an action, which could be brought against the United States under this section, is improperly brought against any officer or employee of the United States (or former officer or employee) or his personal representative, the court shall order, upon such terms as are just, that the pleadings be amended to substitute the United States as a party for such officer or employee as of the time such action was commenced upon proper service of process on the United States.

68A Stat. 876.
26 USC 7422.

"(f) PROVISION INAPPLICABLE.—The provisions of section 7422(a) (relating to prohibition of suit prior to filing claim for refund) shall not apply to actions under this section.

"(g) INTEREST.—Interest shall be allowed at the rate of 6 percent per annum—

"(1) in the case of a judgment pursuant to subsection (b)(2)(B), from the date the Secretary or his delegate receives the money wrongfully levied upon to the date of payment of such judgment; and

"(2) in the case of a judgment pursuant to subsection (b)(2)(C), from the date of the sale of the property wrongfully levied upon to the date of payment of such judgment.

"(h) CROSS REFERENCE.—

"For period of limitation, see section 6532(c)."

(b) PERIOD OF LIMITATION ON SUIT.—Section 6532 (relating to period of limitation on suits) is amended by adding at the end thereof the following new subsection:

"(c) SUITS BY PERSONS OTHER THAN TAXPAYERS.—

Ante, p. 1143.

"(1) GENERAL RULE.—Except as provided by paragraph (2), no suit or proceeding under section 7426 shall be begun after the expiration of 9 months from the date of the levy or agreement giving rise to such action.

Ante, p. 1138.

"(2) PERIOD WHEN CLAIM IS FILED.—If a request is made for the return of property described in section 6343(b), the 9-month period prescribed in paragraph (1) shall be extended for a period of 12 months from the date of filing of such request or for a period of 6 months from the date of mailing by registered or certified mail by the Secretary or his delegate to the person making such request of a notice of disallowance of the part of the request to which the action relates, whichever is shorter."

(c) PROHIBITION OF SUITS TO RESTRAIN ASSESSMENT OR COLLECTION.—Section 7421(a) (relating to prohibition of suits to restrain assessment or collection of tax) is amended to read as follows:

"(a) TAX.—Except as provided in sections 6212 (a) and (c), 6213(a), and 7426 (a) and (b)(1), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed."

(d) Clerical Amendments.—

(1) The heading of subchapter B of chapter 76 is amended to read as follows:

"Subchapter B—Proceedings by Taxpayers and Third Parties"

(2) The table of sections for subchapter B of chapter 76 is amended by striking out

"Sec. 7424. Civil action to clear title to property.
"Sec. 7425. Cross references."

and inserting in lieu thereof

"Sec. 7424. Intervention.
"Sec. 7425. Discharge of liens.
"Sec. 7426. Civil actions by persons other than taxpayers.
"Sec. 7427. Cross references."

(3) The table of subchapters for chapter 76 is amended by striking out

"Subchapter B. Proceedings by Taxpayers."

and inserting in lieu thereof

"Subchapter B. Proceedings by Taxpayers and Third Parties."

SEC. 111. SALE OF PROPERTY ACQUIRED BY UNITED STATES.

(a) Personal Property Acquired.—Section 7505(a) (relating to sale of personal property purchased by the United States) is amended by striking out "purchased by the United States under the authority of section 6335(e) (relating to purchase for the account of the United States of property sold under levy)" and inserting in lieu thereof "acquired by the United States in payment of or as security for debts arising under the internal revenue laws". 68A Stat. 896. 26 USC 7505.

(b) Real Property Redeemed.—Section 7506(a) (relating to person charged with administration of real estate acquired by the United States) is amended by striking out "for the payment of such debts," and inserting in lieu thereof "for the payment of such debts, or which has been redeemed by the United States,".

(c) Clerical Amendments.—

(1) The heading of section 7505 is amended by striking out "PURCHASED" and inserting in lieu thereof "ACQUIRED";

(2) The table of sections for chapter 77 is amended by striking out

"Sec. 7505. Sale of personal property purchased by the United States."

and inserting in lieu thereof

"Sec. 7505. Sale of personal property acquired by the United States."

SEC. 112. FUND FOR REDEMPTION OF REAL PROPERTY BY UNITED STATES.

(a) Creation of Fund for Redemption of Real Property.—Subchapter A of chapter 80 (relating to application of internal revenue laws) is amended by adding at the end thereof the following new section: 26 USC 7801-7809.

"SEC. 7810. REVOLVING FUND FOR REDEMPTION OF REAL PROPERTY.

"(a) Establishment of Fund.—There is established a revolving fund, under the control of the Secretary or his delegate, which shall be available without fiscal year limitation for all expenses necessary for the redemption (by the Secretary or his delegate) of real property

Ante, p. 1141.
Post, p. 1147.

as provided in section 7425(d) and section 2410 of title 28 of the United States Code. There are authorized to be appropriated from time to time such sums (not to exceed $1,000,000 in the aggregate) as may be necessary to carry out the purposes of this section.

"(b) Reimbursement of Fund.—The fund shall be reimbursed from the proceeds of a subsequent sale of real property redeemed by the United States in an amount equal to the amount expended out of such fund for such redemption.

"(c) System of Accounts.—The Secretary or his delegate shall maintain an adequate system of accounts for such fund and prepare annual reports on the basis of such accounts."

68A Stat. 918.
26 USC 7809.

(b) Deposit of Money Received.—Section 7809 (relating to deposit of collections) is amended by striking out "and 7654," in subsection (a) and inserting in lieu thereof "7654, and 7810,"; and by amending subsection (b)—

(1) by striking out "and" at the end of paragraph (2),

(2) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and", and

(3) by inserting after paragraph (3) the following new paragraph:

"(4) Surplus proceeds in sales of redeemed property.—Surplus proceeds in any sale under section 7506 of real property redeemed by the United States, after making allowance for the amount of the tax, interest, penalties, and additions thereto, and for the costs of sale."

(c) Clerical Amendment.—The table of sections for subchapter A of chapter 80 is amended by adding at the end thereof the following:

"Sec. 7810. Revolving fund for redemption of real property."

SEC. 113. EFFECT OF JUDGMENT ON TAX LIEN AND LEVY.

(a) Lien Not Merged in Judgment.—Section 6322 (relating to period of lien) is amended by inserting after "liability for the amount so assessed" the following: "(or a judgment against the taxpayer arising out of such liability)".

(b) Levy.—Section 6502(a) (relating to length of period for collection after assessment) is amended by adding at the end thereof the following new sentence: "The period provided by this subsection during which a tax may be collected by levy shall not be extended or curtailed by reason of a judgment against the taxpayer."

SEC. 114. EFFECTIVE DATE.

(a) General Rule.—Except as otherwise provided, the amendments made by this title shall apply after the date of enactment of this Act, regardless of when a lien or a title of the United States arose or when the lien or interest of any other person was acquired.

(b) Exceptions.—The amendments made by this title shall not apply in any case—

(1) in which a lien or a title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before the date of enactment of this Act; or

(2) in which such amendments would—

(A) impair a priority enjoyed by any person (other than the United States) holding a lien or interest prior to the date of enactment of this Act;

(B) operate to increase the liability of any such person; or

(C) shorten the time for bringing suit with respect to transactions occurring before the date of enactment of this Act.

(c) LIABILITY FOR WITHHELD TAXES.—

(1) The amendments made by section 105(a) (relating to effect on third parties) shall apply only with respect to wages paid on or after January 1, 1967.

(2) The amendments made by section 105(b) (relating to performance bonds of contractors for public buildings or works) shall apply to contracts entered into pursuant to invitations for bids issued after June 30, 1967.

(d) CIVIL ACTION TO CLEAR TITLE TO PROPERTY.—If, before the date of enactment of this Act, any person has commenced a civil action to clear title to property pursuant to section 7424 of the Internal Revenue Code of 1954 as in effect immediately before the enactment of this Act, such action shall be determined in accordance with section 7424 of such Code as in effect immediately before the enactment of this Act.

68A Stat. 877.
26 USC 7424.

TITLE II—CONSENT OF UNITED STATES TO BE SUED IN ACTIONS AFFECTING PROPERTY IN WHICH IT HAS A LIEN OR INTEREST

SEC. 201. JOINDER OF UNITED STATES IN CERTAIN PROCEEDINGS.

Section 2410 of title 28 of the United States Code is amended by redesignating subsection (d) as subsection (e) and by striking out subsections (a), (b), and (c) and inserting in lieu thereof the following new subsections:

62 Stat. 972.

"(a) Under the conditions prescribed in this section and section 1444 of this title for the protection of the United States, the United States may be named a party in any civil action or suit in any district court, or in any State court having jurisdiction of the subject matter—

"(1) to quiet title to,

"(2) to foreclose a mortgage or other lien upon,

"(3) to partition,

"(4) to condemn, or

"(5) of interpleader or in the nature of interpleader with respect to,

real or personal property on which the United States has or claims a mortgage or other lien.

"(b) The complaint or pleading shall set forth with particularity the nature of the interest or lien of the United States. In actions or suits involving liens arising under the internal revenue laws, the complaint or pleading shall include the name and address of the taxpayer whose liability created the lien and, if a notice of the tax lien was filed, the identity of the internal revenue office which filed the notice, and the date and place such notice of lien was filed. In actions in the State courts service upon the United States shall be made by serving the process of the court with a copy of the complaint upon the United States attorney for the district in which the action is brought or upon an assistant United States attorney or clerical employee designated by the United States attorney in writing filed with the clerk of the court in which the action is brought and by

sending copies of the process and complaint, by registered mail, or by certified mail, to the Attorney General of the United States at Washington, District of Columbia. In such actions the United States may appear and answer, plead or demur within sixty days after such service or such further time as the court may allow.

"(c) A judgment or decree in such action or suit shall have the same effect respecting the discharge of the property from the mortgage or other lien held by the United States as may be provided with respect to such matters by the local law of the place where the court is situated. However, an action to foreclose a mortgage or other lien, naming the United States as a party under this section, must seek judicial sale. A sale to satisfy a lien inferior to one of the United States shall be made subject to and without disturbing the lien of the United States, unless the United States consents that the property may be sold free of its lien and the proceeds divided as the parties may be entitled. Where a sale of real estate is made to satisfy a lien prior to that of the United States, the United States shall have one year from the date of sale within which to redeem, except that with respect to a lien arising under the internal revenue laws the period shall be 120 days or the period allowable for redemption under State law, whichever is longer, and in any case in which, under the provisions of section 505 of the
64 Stat. 81. Housing Act of 1950, as amended (12 U.S.C. 1701k), and subsection
72 Stat. 1213. (d) of section 1820 of title 38 of the United States Code, the right to redeem does not arise, there shall be no right of redemption. In any case where the debt owing the United States is due, the United States may ask, by way of affirmative relief, for the foreclosure of its own lien and where property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of its claim with expenses of sale, as may be directed by the head (or his delegate) of the department or agency of the United States which has charge of the administration of the laws in respect to which the claim of the United States arises.

"(d) In any case in which the United States redeems real property under this section or section 7425 of the Internal Revenue Code of
Ante, p. 1141. 1954, the amount to be paid for such property shall be the sum of—

"(1) the actual amount paid by the purchaser at such sale (which, in the case of a purchaser who is the holder of the lien being foreclosed, shall include the amount of the obligation secured by such lien to the extent satisfied by reason of such sale),

"(2) interest on the amount paid (as determined under paragraph (1)) at 6 percent per annum from the date of such sale, and

"(3) the amount (if any) equal to the excess of (A) the expenses necessarily incurred in connection with such property, over (B) the income from such property plus (to the extent such property is used by the purchaser) a reasonable rental value of such property."

SEC. 202. JURISDICTION AND VENUE IN CERTAIN ACTIONS AGAINST UNITED STATES.

(a) Jurisdiction in Proceedings Brought by Third Parties.—
62 Stat. 933. Section 1346 of title 28 of the United States Code is amended by adding at the end thereof the following new subsection:

"(e) The district courts shall have original jurisdiction of any civil action against the United States provided in section 7426 of the Inter-
Ante, p. 1143. nal Revenue Code of 1954."

(b) Venue in Proceedings Brought by Third Parties.—Section 1402 of title 28 of the United States Code is amended by adding at the end thereof the following new subsection: 62 Stat. 937.

"(c) Any civil action against the United States under subsection (e) of section 1346 of this title may be prosecuted only in the judicial district where the property is situated at the time of levy, or if no levy is made, in the judicial district in which the event occurred which gave rise to the cause of action." Ante, p. 1148.

SEC. 203. EFFECTIVE DATE.

The amendments made by this title shall apply after the date of the enactment of this Act.

Approved November 2, 1966.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 1884 (Comm. on Ways & Means).
SENATE REPORT No. 1708 (Comm. on Finance).
CONGRESSIONAL RECORD, Vol. 112 (1966):
Sept. 12: Considered and passed House.
Oct. 13: Considered and passed Senate, amended.
Oct. 20: House concurred in Senate amendments.

SECTION 2

"AMERICAN BAR ASSOCIATION FINAL REPORT OF THE COMMITTEE ON FEDERAL LIENS," APPROVED FEBRUARY 23, 1959

(See Section 6 of this document, page 118)

SECTION 3

BILLS AS INTRODUCED IN THE HOUSE OF REPRESENTATIVES

(See Section 6 of this document:
H.R. 11256 (MILLS) page 47
H.R. 11290 (BYRNES OF WISCONSIN) page 64)

SECTION 4

PRESS RELEASE OF THE COMMITTEE ON WAYS AND MEANS DATED SEPTEMBER 24, 1965, ANNOUNCING INTRODUCTION OF BILL ON FEDERAL TAX LIENS

FOR THE PRESS
FOR IMMEDIATE RELEASE
SEPTEMBER 24, 1965

COMMITTEE ON WAYS AND MEANS
U. S. HOUSE OF REPRESENTATIVES
1102 LONGWORTH HOUSE OFFICE BLDG.

CHAIRMAN WILBUR D. MILLS (D., ARK.), COMMITTEE ON WAYS AND MEANS, ANNOUNCES INTRODUCTION OF BILL ON FEDERAL TAX LIENS

Chairman Wilbur D. Mills (D., Ark.), Committee on Ways and Means, today announced that he has introduced a bill, H. R. 11256 , relating to the relative priority of Federal tax liens over the interest of other creditors. This is a bill which, in large part, has been developed by a subcommittee of the American Bar Association and is being introduced at its request.

This bill is identical in all but two particulars with a previous bill, H. R. 12545, introduced in the 88th Congress. Chairman Mills indicated that this bill is being reintroduced at this time in order to give interested parties an opportunity to comment on the one provision which has been substantially revised, and on another provision which has been added to the bill.

The provision which has been revised relates to the collection by the United States of withholding taxes. The bill introduced last year provided a notification procedure wherein contractors and subcontractors were required to give notice as to whether withheld taxes had been paid to the Government. Objections were raised to these provisions. As a result, the provisions contained in the current bill, in lieu of the notification procedure, provide that the Federal Government is to have the same rights of collection with respect to the 14 percent of the wages withheld as an unpaid employee already has with respect to the 86 percent of the wages not withheld. That is, the Government is, in effect, given the right to file a statutory lien which is essentially the same as the mechanic's lien which may be filed by the employee. This revised provision appears as section 105(a) of the bill adding a new section 3506 to the Code. Chairman Mills indicated he is particularly anxious that this provision be studied.

The new provision relates to insurance contracts and provides with respect to these contracts a procedure by which the Government can levy on the policyholder's interest without extinguishing the policy by foreclosure. See sections 101 and 104(b) of the bill adding sections 6323(d)(1), 6332(b) and 6332(d) to the Code. In addition to these changes, a number of technical changes have been proposed by interested parties which have not as yet been included in this bill, but which may be at a later time.

Chairman Mills has said that this bill will be given careful consideration, and it is hoped that it will be possible to hold hearings on it next year.

In addition to the new or revised provisions described above, the bill revises and updates numerous provisions of the Internal Revenue Code relating to the priority of Federal

tax liens over interests of other creditors. The present provisions were enacted in 1924. The development since that time of a variety of new techniques for financing modern business has raised a host of new security interests which the present tax lien provisions were not designed to accommodate. As a result, some common forms of financing, which are entitled to priority under modern State statutes, are denied priority as against a lien under the Internal Revenue Code. This bill would add new provisions to the Internal Revenue Code to protect these new financing techniques. The bill attempts, however, to limit this protection to those circumstances where it is justified and to protect the legitimate interests of the United States in the collection of its tax revenues.

In addition, the bill would provide answers for a number of technical questions which have arisen over the past several years and which have not been adequately answered by the court decisions. The bill would also make some changes in the rules for the litigation of cases concerning the collection of Federal taxes.

SECTION 5

PRESS RELEASE OF THE COMMITTEE ON WAYS AND MEANS DATED FEBRUARY 11, 1966, ANNOUNCING ONE-DAY PUBLIC HEARINGS ON H.R. 11256 (MILLS) AND H.R. 11290 (BYRNES OF WISCONSIN)

(See Section 6 of this document, page 45)

SECTION 6

HEARINGS BEFORE THE COMMITTEE ON WAYS AND MEANS

70-903 O-66—4

PRIORITY OF FEDERAL TAX LIENS AND LEVIES

HEARINGS

BEFORE THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH CONGRESS

SECOND SESSION

ON

H.R. 11256 and H.R. 11290

TO AMEND THE INTERNAL REVENUE CODE OF 1954 WITH RESPECT TO THE RELATIVE PRIORITY AND EFFECT OF FEDERAL TAX LIENS AND LEVIES OVER THE INTEREST OF OTHER CREDITORS

MARCH 2, 1966

Printed for use of the Committee on Ways and Means

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1966

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PRIORITY OF FEDERAL TAX LIENS AND LEVIES

WEDNESDAY, MARCH 2, 1966

House of Representatives,
Committee on Ways and Means,
Washington, D.C.

The committee met at 10 a.m., pursuant to notice, in the committee room, Longworth House Office Building, Hon. Wilbur D. Mills (chairman of the committee) presiding.

The Chairman. The committee will please be in order.

The purpose of the hearing today is to receive testimony from interested public witnesses on bills to amend the Internal Revenue Code of 1954 with respect to the relative priority effect of Federal tax liens and levies over the interest of other creditors.

Two bills in particular on the subject are H.R. 11256 which I introduced, and H.R. 11290, which was introduced by Mr. Byrnes, the ranking Republican member.

The bills generally are identical except with respect to certain language relating to liens for withheld taxes, which is a part of section 105(a) of my bill but which is not contained in Mr. Byrne's bill.

The Chair might observe that a great deal of work on this general subject has been conducted by the special committees of the American Bar Association, over a period of years, which has culminated in the bills pending before the committee.

Without objection, a copy of the press release which was issued announcing these hearings will be made a part of the record at this point.

(The press release referred to follows:)

February 11, 1966.

Chairman Wilbur D. Mills, Democrat of Arkansas, House Committee on Ways and Means, Announces 1-Day Public Hearing on March 2, 1966, on H.R. 11256 (Mills) and H.R. 11290 (Byrnes of Wisconsin), Bills To Amend the Internal Revenue Code With Respect to the Priority and Effect of Federal Tax Liens and Levies

Chairman Wilbur D. Mills, Democrat of Arkansas, Committee on Ways and Means, U.S. House of Representatives, today announced that the committee would conduct a 1-day public hearing on Wednesday, March 2, 1966, on H.R. 11256 (Mills) and H.R. 11290 (Byrnes of Wisconsin), bills to amend the Internal Revenue Code of 1954 with respect to the relative priority and effect of Federal tax liens and levies over the interest of other creditors.

It will be recalled that the chairman and Representative Byrnes introduced these bills at the request of a subcommittee of the American Bar Association on September 24, 1965, and September 27, 1965, respectively, in order to make them available to the general public as a basis for comment and study. These bills resulted from study by a subcommittee of the American Bar Association and other interested groups, in conjunction with the Treasury Department, over an extended period of time. The bills are not identical, in one principal respect, as follows:

1

H.R. 11256 contains a provision relating to the collection by the United States of withholding taxes, which is not contained in H.R. 11290. This provision, generally, would give the Federal Government the same rights of collection with respect to the present 14 percent of the wages withheld as an unpaid employee has with respect to the 86 percent of the wages not withheld. That is, in this particular provision, the Government would, in effect, be given the right to file a statutory lien which would be essentially the same as a mechanic's lien which may be filed by an employee. The particular provision appears in section 105(a) of H.R. 11256. As indicated above, such a provision is not contained in H.R. 11290.

The chairman stated that it had been agreed by the committee that it would be unnecessary for the committee to receive testimony on the provision which is described immediately above (that is, sec. 105(a) which is contained in Mr. Mills' bill. There is no provision on this subject contained in Mr. Byrnes' bill). Therefore, no testimony will be received relating to this particular provision of H.R. 11256. In the event a provision of this nature should be further considered in connection with this legislation before a bill is reported, testimony on it will be received at a later date.

Chairman Mills pointed out that the subject of the relative priority of Federal tax liens over the interest of other creditors is a subject on which there have been many court cases since the existing provisions of law were enacted in 1924, and that a great deal of study has been given to this subject and to the proposed legislation by various groups within the American Bar Association and other interested organizations.

The chairman further stated that, due to the heavy schedule of the committee and due to the further fact that this and other legislation on the subject has been available for study for quite some time, the hearing must be completed on March 2, 1966. To that end it is mandatory that all interested individuals and organizations with a similar interest coordinate their testimony and designate one spokesman in order to conserve the time of the committee, prevent repetition, and assure that all aspects of the matter will be given appropriate attention within the time allocation.

Requests to be heard should be submitted to the chief counsel of the Committee on Ways and Means, Mr. Leo H. Irwin, room 1102, Longworth House Office Building, Washington, D.C., not later than the close of business Monday, February 28, 1966.

The committee will be pleased to receive from any interested person a written statement for inclusion in the printed record of the hearing in lieu of a personal appearance. These statements will be given the same full consideration as though the statements had been presented in person. In such cases, where statements are submitted in lieu of a personal appearance, a minimum of three copies of the statement should be submitted by the close of business Wednesday, March 2, 1966.

Contents of requests to be heard.—In order to eliminate repetitious testimony and to properly schedule witnesses and allocate time, it will be necessary for the requests to be heard to specify:

(1) the name, address, and capacity in which the witness will appear;

(2) the list of persons the witness represents or, in the case of an association or other organization, their total membership and where possible a membership list of the association or organization;

(3) the amount of time the witness desires in which to present his direct oral testimony;

(4) an indication of whether or not the witness is supporting or opposing the provisions in the bills; and

(5) a summary of the comments and recommendations which the witness proposes to make.

Written statements.—In the case of those persons who are scheduled to appear and testify, it is requested that 60 copies of their written statements be submitted at least 24 hours in advance of their scheduled appearance. If it is desired an additional 60 copies may be submitted for distribution to the press and the interested public on the witness' date of appearance. Persons submitting written statements in lieu of a personal appearance may also, if they desire, submit an additional 60 copies of their statements for distribution to the committee members and the interested departmental and legislative staffs pending the printing of the public hearings, which will include such statements along

with the oral testimony of those persons who appear in person. An additional 60 copies may be submitted for the press and the interested public if it is desired.

Format of all written statements.—To more usefully serve their purpose, all written statements should begin with a summary of comments and recommendations and the detailed statements which follow should contain subject headings conforming to the summary of comments and recommendations.

The CHAIRMAN. In addition, without objection, copies of the bills will also be made a part of the record.

(The bills referred to follow:)

[H.R. 11256, 89th Cong., 1st sess.]

A BILL To amend the Internal Revenue Code of 1954 with respect to the priority and effect of Federal tax liens and levies, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE, ETC.

(a) SHORT TITLE.—This Act may be cited as the "Federal Tax Lien Act of 1965".

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

TITLE I—PRIORITY AND EFFECT OF TAX LIENS AND LEVIES

SEC. 101. PRIORITY OF LIENS.

Section 6323 (relating to validity of tax liens against mortgagees, pledgees, purchasers, and judgment creditors) is amended to read as follows:

"SEC. 6323. VALIDITY AND PRIORITY AGAINST CERTAIN PERSONS.

"(a) INVALIDITY OF LIEN WITHOUT NOTICE.—Except as otherwise provided in this section, the lien imposed by section 6321 shall not be valid as against any purchaser, mechanic's lienor, judgment lien creditor, or holder of a security interest until notice thereof has been filed by the Secretary or his delegate—

"(1) UNDER STATE LAWS.

"(A) REAL PROPERTY.—In the case of real property, in one office within the State, county or other governmental subdivision in which the property subject to the lien is situated, as designated by the laws of such State;

"(B) PERSONAL PROPERTY.—In the case of personal property, whether tangible or intangible, in one office in the State, county or other governmental subdivision in which the property is situated, as designated by the laws of such State; or

"(2) WITH CLERK OF DISTRICT COURT.—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State has not by law designated an office described in prargraph (1) or has designated more than one such office for the filing of such notice within the State, county, or other governmental subdivision in which such property is situated; or

"(3) WITH CLERK OF DISTRICT COURT FOR DISTRICT OF COLUMBIA.—In the office of the clerk of the United States District Court for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

"(b) FORM OF NOTICE.—The form of the notice (described in subsection (a)(1)) shall be established by the Secretary or his delegate. Such notice shall be valid notwithstanding any law regarding the form or content of a notice of lien.

"(c) SITUS OF PROPERTY SUBJECT TO LIEN.—

"(1) SITUS OF PROPERTY.—For purposes of subsection (a), property shall be deemed to be situated—

"(A) REAL PROPERTY.—In the case of real property, at its physical location;

"(B) PERSONAL PROPERTY.—In the case of personal property, whether tangible or intangible, at the residence of the taxpayer at the time such notice of lien is filed.

"(2) RESIDENCE.—For purposes of paragraph (1) (B)—

"(A) The residence of a corporation or partnership shall be deemed to be the place at which the principal executive office of the business is located.

"(B) The residence of a taxpayer whose residence is without the United States shall be deemed to be Washington, D.C.

"(d) INVILIDITY OF LIEN IN CERTAIN CASES.—Even though notice of a lien imposed by section 6321 has been filed as provided in subsection (a), such lien shall not be valid—

"(1) SECURITIES.—With respect to a security (as defined in subsection (h) (1)), as against a holder of a security interest in, or purchaser of, such security for an adequate and full consideration in money or money's worth, if at the time such security interest arose (or was acquired from a previous holder) or at the time of such purchase such person did not have actual notice or knowledge of such lien;

"(2) MOTOR VEHICLES.—With respect to a motor vehicle (as defined in subsection (h) (5)), as against a purchaser of such motor vehicle for an adequate and full consideration in money or money's worth, if at the time of such purchase such purchaser did not have actual notice or knowledge of the existence of such lien and such purchaser, prior to obtaining such notice or knowledge acquires possession of such motor vehicle and does not thereafter relinquish possession of such motor vehicle to the seller or his agent;

"(3) PROPERTY PURCHASED AT RETAIL.—With respect to tangible personal property purchased at retail, in the ordinary course of the seller's trade or business;

"(4) PROPERTY SUBJECT TO POSSESSORY LIENS.—With respect to property subject to a lien under local law securing the reasonable price of the improvement, alteration, or repair of tangible personal property, as against a holder of such a lien, if such person is, and has been, continuously in possession of such property from the time such lien arose;

"(5) ATTORNEYS' LIENS.—With respect to a judgment or an amount in settlement of a cause of action, as against an attorney who holds a lien under local law upon such judgment or amount, to the extent of his reasonable compensation for obtaining such judgment or procuring such settlement;

"(6) REAL PROPERTY TAX AND SPECIAL ASSESSMENT LIENS.—With respect to real property, as against a holder of a lien upon such property, if such lien is entitled under local law to priority over security interests in such property which are prior in time, and such lien—

"(A) secures the payment of a tax of general application levied by any taxing authority based upon the value of such property;

"(B) secures the payment of a special assessment imposed directly upon such property by any taxing authority, if such assessment is imposed for the purpose of defraying the cost of any public improvement; or

"(C) secures payment of charges for utilities or public services furnished to such property.

"(7) CERTAIN INSURANCE CONTRACTS.—With respect to a life insurance, endowment, or annuity contract owned by the person against whom is assessed the tax out of which such lien arose, as against the organization which is the insurer under such contract, at any time—

"(A) before such organization had actual notice or knowledge of such lien;

"(B) after such organization had such notice or knowledge, with respect to advances (including contractual interest thereon) required to be made to maintain such contract in force automatically under an agreement entered into before such organization had such notice or knowledge;

"(C) after satisfaction of a levy pursuant to section 6332(b), unless and until the Secretary or his delegate delivers to such organization a new notice of the lien, executed after the date of such satisfaction."

Paragraph (3) shall not apply to a purchase if at the time of the purchase the purchaser intends or knows that the purchase is intended to hinder, evade, or defeat the collection of any tax. Paragraph (5) shall not apply to any part of a judgment or of an amount in settlement of a cause of action which the Secretary or his delegate credits against any liability of the taxpayer under section 6402 (relating to authority to make credits or refunds).

"(e) PRIORITY OF INTEREST AND EXPENSES.—If the lien imposed by section 6321 is not valid as against a lien or security interest described in subsection (a) or (d) of this section, the priority of such lien or security interest shall, if local law or an agreement valid under local law so provides, extend to—

"(1) any interest upon the obligation secured,

"(2) the reasonable charges and expenses of an indenture trustee or agent holding the security interest for the benefit of the holder of the security interest,

"(3) the reasonable and necessary expenses, including attorney's fees, actually incurred in collecting or enforcing the obligation secured,

"(4) the reasonable and necessary costs of insuring, preserving, or repairing the property subject to such lien or insuring such security interest, and

"(5) amounts paid to satisfy a lien on such property, but only if such lien is entitled to priority over the lien imposed by section 6321.

"(f) FUTURE ADVANCES.—

"(1) DATE OF PRIORITY.—Except for purposes of this subsection and subsection (g), the priority of the lien imposed by section 6321, as against the holder of a security interest which arose (within the meaning of subsection (h)(4)(B)) prior to the filing pursuant to subsection (a) of notice of such lien, shall be determined as though such notice were filed 45 days after the date of actual filing or, if earlier, the first date on or after the date of filing of such notice on which holder had actual notice or knowledge of such lien.

"(2) OBLIGATORY ADVANCES.—Without regard to the date of disbursement, the priority of a security interest which arose prior to the filing pursuant to subsection (a) of notice of the lien imposed by section 6321 shall extend to disbursements made pursuant to a written contractual obligation in negotiable form or which runs to a person other than the taxpayer, if such obligation was undertaken prior to such filing and obligates the holder of such security interest to make such disbursements on the happening of an event beyond the control of such holder. The priority granted by this paragraph shall apply only with respect to—

"(A) property owned by the taxpayer and subject to the security interest within 45 days after such filing,

"(B) any other property (including money or rights to money), to the extent that the purchase, completion, production, or earning of such property was financed by such disbursements and such property was the security for such security interest, and

"(C) if the security interest is held by a surety and indemnifies the surety against a loss or liability arising from a surety obligation, the proceeds of a contract in connection with which the surety obligation was undertaken and any other property acquired by the taxpayer for the purpose of performing such contract.

"(3) COMPLETION ADVANCES.—

"(A) PRIORITY OF ADVANCES.—Without regard to the date of disbursement, the priority of a security interest which arose prior to the filing pursuant to subsection (a) of notice of the lien imposed by section 6321 shall extend to disbursements made to finance—

"(i) the purchase, construction, improvement, alteration, repair, or demolition of real property subject to the security interest,

"(ii) the performance or completion of a contract for the construction, improvement, alteration, repair, or demolition of real property, the proceeds of which are subject to the security interest, or

"(iii) the raising or harvesting of a crop or the raising of livestock.

"(B) APPLICATION OF PROPERTY.—The priority granted by this paragraph shall apply only with respect to—

"(i) the property (including money or rights to money), the purchase, construction, improvement, alteration, repair, demolition, earning, raising or harvesting of which was financed by such disbursements,

"(ii) in the case of disbursements to which subparagraph (A)(i) applies, the proceeds of a contract for the use of such property, but only if such contract was entered into on or before the date on which the security interest arose, and

"(iii) in the case of disbursements to which subparagraph (A) (iii) applies, any other property owned by the taxpayer and subject to the security interest within 45 days after filing of notice of such lien.

"(4) Special rule.—This subsection shall apply only if all requisite actions under local law to protect the priority of such security interest are taken.

"(g) Priority Under Certain Financing Agreements.—If, prior to the filing pursuant to subsection (a) of notice of the lien imposed by subsection 6321, a written financing agreement providing for loans on the security of or the purchase of accounts, contract rights, chattel paper, documents, notes, instruments or mortgages is entered into and is valid under local law, and all requisite actions under local law are taken to protect security interests or purchases under such financing agreement against a subsequent lien obtainable by legal or equitable proceedings on a simple contract, then such lender or purchaser shall have priority over the lien imposed by section 6321 with respect to all such security interests acquired or purchases made prior to—

"(1) 45 days after such filing of notice, or

"(2) if earlier, the first date on or after the date of such filing on which such lender or purchaser had actual notice or knowledge of such lien.

"(h) Definitions.—For purposes of sections 6323 and 6324—

"(1) Security.—The term 'security' means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate or interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

"(2) Purchaser.—Except as otherwise provided in this section, the term 'purchaser' means a person who, for adequate and full consideration in money or money's worth, acquires an interest (other than a security interest) in property, including a lease on such property, a written executory contract to purchase or lease such property, or an option to purchase or lease such property or an interest therein, or an option to renew or extend the term of such a lease, provided the interest so acquired is valid under local law against subsequent purchasers without actual notice.

"(3) Mechanic's lienor.—The term 'mechanic's lienor' means any person who under local law has a lien on real property or on the proceeds of a contract relating to such property, for services, labor, or materials. If all requisite actions under local law are taken, whether prior tor subsequent to the filing of notice of the lien imposed by section 6321, to perfect, maintain, and enforce such lien, such lien shall be deemed to have priority as against a lien imposed by section 6321, notice of which has been filed pursuant to subsection (a), on the earliest date it becomes valid under local law against subsequent purchasers without actual notice, but in no event before the commencement of the actual performance of the service or labor or supplying of material.

"(4) Security interest.—

"(A) Definition.—The term 'security interest' means any interest in property acquired by contract for an adequate and full consideration in money or money's worth for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability.

"(B) Effect.—A security interest shall be deemed to arise at the time when it becomes protected under local law as against a subsequent lien upon such property obtainable by legal or equitable proceedings on a simple contract.

"(5) Motor vehicle.—The term 'motor vehicle' means a self-propelled vehicle which is registered for highway use under the laws of any State or foreign country.

"(1) Disclosure of amount of outstanding lien.—If a notice of lien has been filed pursuant to subsection (a), the Secretary or his delegate is authorized to provide by rules or regulations the extent to which, and the conditions under which, information as to the amount of the outstanding obligation secured by the lien may be disclosed.

"(2) Actual notice or knowledge.—For purposes of this subchapter and sections 3505 and 3506, an organization shall be deemed for purposes of a particular transaction to have actual notice or knowledge of any fact from

the time such fact is brought to the attention of the individual conducting such transaction, and in any event from the time such fact would have been brought to such individual's attention if the organization had exercised due diligence.

"(3) CONSIDERATION IN MONEY OR MONEY'S WORTH.—For purposes of this subchapter, the term 'money or money's worth' shall include forbearance to sue or take other action to collect or enforce an antecedent debt or obligation.

"(4) SUBROGATION.—Any person having a contractual, equitable or statutory right of subrogation to any lien or interest which has priority over a lien under section 6321 shall enjoy a like priority.

"(5) FIXTURES.—For purposes of this section, the priority of a security interest with respect to property shall extend to any property which is attached to and physically becomes an integral part of the property subject to such security interest."

SEC. 102. SPECIAL LIENS FOR ESTATE AND GIFT TAXES.

Section 6324 (relating to special liens for estate and gift taxes) is amended to read as follows:

"SEC. 6324. SPECIAL LIENS FOR ESTATE AND GIFT TAXES.

"(a) LIENS FOR ESTATE TAX.—Except as otherwise provided in subsection (c) (relating to exceptions)—

"(1) UPON GROSS ESTATE.—Unless the estate tax imposed by chapter 11 is sooner paid in full, or becomes unenforceable by reason of lapse of time, it shall be a lien upon the gross estate of the decedent for 10 years from the date of death, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien.

"(2) LIABILITY OF TRANSFEREES AND OTHERS.—If the estate tax imposed by chapter 11 is not paid when due, then the spouse, tranferee, trustee (except the trustee of an employees' trust which meets the requirements of section 401(a)), surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042, inclusive, to the the extent of the value, at the time of the decedent's death, of such property shall be personally liable for such tax. Any part of such property transferred by (or transferred by a transferee of) such spouse, transferee, trustee, surviving tenant, person in possession of property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, to a bona fide purchaser or a holder of a security interest, for an adequate and full consideration in money or money's worth shall be divested of the lien provided in paragraph (1) and a like lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, beneficiary, or transferee of any such person, except any part transferred to a bona fide purchaser or holder of a security interest for an adequate and full consideration in money or money's worth.

"(3) CONTINANCE AFTER DISCHARGE OF EXECUTOR.—The provisions of section 2204 (relating to discharge of executor from personal liability) shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless such part of the gross estate (or any interest therein) has been transferred to a bona fide purchaser or holder of a security interest for an adequate and full consideration in money or money's worth, in which case such part (or such interest) shall nct be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser or holder of a security interest, by the heirs, legatees, devisees, or distributees.

"(b) LIEN FOR GIFT TAX.—Except as otherwise provided in subsection (c) (relating to exceptions), unless the gift tax imposed by chapter 12 is sooner paid in full or becomes unenforceable by reason of lapse of time, such tax shall be a lien upon all gifts made during the calendar year for 10 years from the date such gifts are made. If the tax is not paid when due the donee of any gift shall be personally liable for such tax to the extent of the value of such gift. Any part of the property comprised in the gift transferred by the donee (or by a transferee

of the donee) to a bona fide purchaser or holder of a security interest for an adequate and full consideration in money or money's worth shall be divested of the lien herein imposed and the lien, to the extent of the value of such gift, shall attach to all the property (including after-acquired property) of the donee (or the transferee) except any part transferred to a bona fide purchaser or holder of a security interest for an adequate and full consideration in money or money's worth.

"(c) EXCEPTIONS.—

"(1) The lien imposed by subsections (a) or (b) shall not be valid—

"(A) with respect to any lien or interest described in section 6323(d) (relating to invalidity of lien in certain cases), or

"(B) as against a mechanic's lienor.

"(2) If a lien or security interest is entitled to priority over the lien imposed by subsections (a) or (b), such priority shall, if local law or an agreement valid under local law so provides, extend to the items described in section 6323(e) (relating to priority of interest and expenses).

"(d) CROSS REFERENCE.—For definitions of the terms 'purchaser', 'security interest', and 'mechanic's lienor', see section 6323(h)."

SEC. 103. CERTIFICATES RELATING TO LIENS.

(a) DETERMINATION OF VALUE OF INTEREST.—Section 6325(b) (relating to partial discharge of property from lien) is amended by striking out "fair market" in the sentence following paragraph (2)(B).

(b) SALE PROCEEDS SUBSTITUTED FOR DISCHARGED PROPERTY.—Section 6325(b) is further amended by adding at the end thereof the following new paragraph:

"(3) SUBSTITUTION OF PROCEEDS OF SALE.—Subject to such rules or regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to the lien if such property is sold and, pursuant to an agreement with the Secretary or his delegate, the proceeds of such sale are to be held as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as such liens and claims had with respect to the discharged property."

(c) EFFECT OF CERTAIN CERTIFICATES.—Section 6325 (relating to release of lien or partial discharge of property) is amended by striking out subsection (d), redesignating subsection (e) as subsection (h), and by inserting after subsection (c) the following new subsections:

"(d) SUBORDINATION OF LIEN.—Subject to such rules or regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of subordination of any lien imposed by this title upon any part of the property subject to such lien if—

"(1) there is paid over to the Secretary or his delegate an amount equal to the amount of the lien or interest to which the certificate subordinates the lien of the United States, or

"(2) the Secretary or his delegate believes that the amount realizable by the United States from the property to which the certificate relates, or from any other property subject to the lien, will ultimately be increased by reason of the issuance of such certificate and that the ultimate collection of the tax liability will be facilitated by such subordination.

"(e) NONATTACHMENT OF LIEN.—If the Secretary or his delegate determines that, because of confusion of names or otherwise, any person (other than the person against whom the tax was assessed) is or may be injured by the appearance that a notice of lien filed under section 6323 refers to such person, the Secretary or his delegate may issue a certificate that the lien does not attach to the property of such person.

"(f) EFFECT OF CERTIFICATE.—

"(1) CONCLUSIVENESS.—Except as provided in paragraphs (2) and (3), if a certificate is issued pursuant to this section by the Secretary or his delegate and is filed in the same office as the notice of lieu to which it relates (if such notice of lien has been filed) such certificate shall have the following effect:

"(A) in the case of a certificate of release, such certificate shall be conclusive that the lien covered by such certificate is extinguished;

"(B) in the case of a certificate of discharge, such certificate shall be conclusive that the property covered by such certificate is discharged from the lien;

"(C) in the case of a certificate of subordination, such certificate shall be conclusive that the lien or interest to which the lien of the United States is subordinated is superior to the lien of the United States; and

"(D) in the case of a certificate of nonattachment, such certificate shall be conclusive that the lien of the United States does not attach to the property of the person described in such certificate.

"(2) REVOCATION OF CERTIFICATE OF RELEASE AND NONATTACHMENT.—If the Secretary or his delegate determines that a certificate of release or nonattachment was issued erroneously or improvidently, or if any certificate provided in this section was issued pursuant to a collateral agreement entered into in connection with an offer in compromise under section 7122 which has been breached, and if the period of limitation on collection after assessment has not expired, the Secretary or his delegate may revoke such certificate and reinstate the lien as of its original effective date—

"(A) by mailing notice of such revocation to the last known address of the person against whom the tax was assessed, and

"(B) by filing notice of such revocation in the same office as the notice of lien to which it relates (if such notice of lien has been filed).

This paragraph shall not apply with respect to the interest of any person (other than the person against whom the tax was assessed), or a transferee of such interest, in any property with respect to which such person or his transferor has in good faith taken substantial action to his detriment with respect to such property in reliance upon such a certificate prior to the time he receives actual notice or knowledge of such revocation.

"(3) CERTIFICATES VOID UNDER CERTAIN CONDITIONS.—Notwithstanding any other provision of this subtitle, the attachment of any lien imposed by this title to any property with respect to which a certificate of discharge or nonattachment has been issued shall not be barred if the person liable for the tax acquires or reacquires such property after such certificate has been issued.

"(g) FILING OF CERTIFICATES AND NOTICES.—If a certificate or notice issued pursuant to this section may not be filed in the office designated by State law in which the notice of lien imposed by section 6321 is filed, such certificate or notice shall be effective if filed in the office of the clerk of the United States district court for the judicial district in which such office is situated. If such certificate or notice is in the form prescribed by the Secretary or his delegate, the clerk of any United States district court shall accept such certificate or notice for filing."

(d) TECHNICAL AMENDMENTS.—

(1) AMENDMENT OF SECTION 6325.—Paragraph (4) of section 6325(h) (relating to cross reference) (as redesignated by section 103(c) of this Act) is amended to read as follows:

"(4) For provisions relating to proceedings by third parties against the United States, see section 7426."

(2) CHANGE OF HEADING OF SECTION 6325.—Section 6325 is amended by striking out the heading and inserting in lieu thereof:

"SEC. 6325. CERTIFICATES RELATING TO LIENS."

(3) AMENDMENT OF TABLE OF SECTIONS.—The table of sections of subchapter C of chapter 64 is amended by striking out

"Sec. 6325. Release of lien and partial discharge of property."

and inserting in lieu thereof

"Sec. 6325. Certificates relating to liens."

SEC. 104. SEIZURE OF PROPERTY FOR COLLECTION OF TAXES.

(a) EFFECT OF LEVY.—Section 6331(b) (relating to seizure and sale of property by levy and distraint) is amended by inserting after the first sentence the following new sentence: "A levy shall extend only to property possessed and obligations existing at the time thereof."

(b) SURRENDER OF PROPERTY SUBJECT TO LEVY.—Section 6332 (relating to surrender of property subject to levy) is amended—

(1) by striking out "Any person" in subsection (a) and inserting in lieu thereof "Except as otherwise provided in subsection (b), any person";

(2) by striking out subsection (b) and inserting in lieu thereof the following new subsection:

"(b) SPECIAL RULE FOR LIFE INSURANCE AND ENDOWMENT CONTRACTS.—

"(1) In general.—A levy on an organization with respect to a life insurance or endowment contract issued by such organization shall, without necessity for the surrender of the contract document, constitute a demand by the Secretary or his delegate for payment of the amount described in paragraph (2) and the exercise of the right of the person against whom the tax is assessed to the advance of such amount. Such organization shall pay over such amount 90 days after service of notice of levy. Such notice shall include a certification by the Secretary or his delegate that a copy of such notice has been mailed to the person against whom the tax is assessed at his last known address.

"(2) Satisfaction of levy.—Such levy shall be deemed to be satisfied if such organization pays over to the Secretary or his delegate the amount which the person against whom the tax is assessed could have had advanced to him by such organization on the date prescribed in paragraph (1) for the payment of such levy, increased by the amount of any advance (including contractual interest thereon) made to such person on or after the date such organization had actual notice or knowledge of the lien upon which such levy is based, other than an advance (including contractual interest thereon) made to maintain such contract in force automatically under an agreement entered into before such organization had such notice or knowledge.

"(3) Enforcement proceedings.—The satisfaction of a levy under paragraph (2) shall be without prejudice to any civil action for the enforcement of any lien with respect to such contract."

(3) by redesignating subsection (c) as subsection (e);

(4) by inserting before subsection (e) as redesignated the following new subsections:

"(c) Enforcement of Levy.—".

"(1) Extent of personal liability.—Any person who fails or refuses to surrender any property or rights to property, subject to levy, upon demand by the Secretary or his delegate, shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of taxes for the collection of which such levy has been made, together with costs and interest on such sum at the rate of 6 percent per annum from the date of such levy. Any amount (other than costs) recovered under this paragraph shall be credited against the liability for taxes and interest for the collection of which such levy was made.

"(2) Penalty for violation.—In addition to the personal liability imposed by paragraph (1), if any person required to surrender property or rights to property fails or refuses to surrender such property or rights to property without just cause, such person shall pay a penalty equal to 50 percent of the amount recoverable under paragraph (1). No part of such penalty shall be credited against the tax liability for the collection of which levy was made.

"(d) Effect of Honoring Levy.—Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the Secretary or his delegate, surrenders such property or rights to property (or discharges such obligation) to the Secretary or his delegate (or who pays a liability under subsection (c)(1)) shall be discharged from any obligation or liability to the delinquent taxpayer with respect to such property or rights to property arising from such surrender or payment. In the case of a levy which is satisfied pursuant to subsection (b), such organization shall also be discharged from any obligation or liability to any beneficiary arising from such surrender or payment."

(c) Property Exempt From Levy.—Section 6334 (a) (relating to enumeration of property exempt from levy) is amended—

(1) by striking out "or Territory" in paragraph (4); and

(2) by adding at the end thereof the following new paragraph:

"(5) Certain annuity and pension payments.—Annuity or pension payments under the Railroad Retirement Act, benefits under the Railroad Unemployment Insurance Act, special pension payments received by a person whose name has been entered on the Army, Navy, and Air Force Medal of Honor roll (38 U.S.C. 562), and annuities based on retired or retainer pay under chapter 73 of title 10 of the United States Code."

(d) PUBLICATION OF NOTICE OF SALE.—The first sentence of section 6335(b) (relating to notice of sale of seized property) is amended to read as follows: "The Secretary or his delegate shall as soon as practicable after the seizure of the property give notice to the owner, in the manner prescribed in subsection (a), and shall cause a notification to be published in some newspaper published or generally circulated within the county wherein such seizure is made, or, if there be no newspaper published or generally circulated in such county, shall post such notice at the post office nearest the place where the seizure is made, and in not less than two other public places."

(e) REDEMPTION PERIOD.—Paragraph (1) of section 6337 (b) (relating to period of redemption of real estate after sale) is amended by striking out "1 year" and inserting in lieu thereof "120 days".

(f) PREPARATION OF DEED.—Section 6338(c) (relating to real property purchased by United States) is amended to read as follows:

"(c) REAL PROPERTY PURCHASED BY UNITED STATES.—If real property is declared purchased by the United States at a sale pursuant to section 6335, the Secretary or his delegate shall at the proper time execute a deed therefor, and without delay, cause such deed to be duly recorded in the proper registry of deeds."

(g) DISCHARGE OF JUNIOR ENCUMBRANCES.—Section 6339 (relating to legal effect of certificate of sale of personal property and deed of real property) is amended by adding at the end thereof the following new subsections:

"(c) EFFECT ON JUNIOR ENCUMBRANCES.—A certificate of sale of personal property given or a deed to real property executed pursuant to section 6338 shall discharge such property from all liens, encumbrances, and titles over which the lien of the United States upon which the levy was based had priority.

"(d) CROSS REFERENCES.—

"(1) For distribution of surplus proceeds, see section 6342(b).

"(2) For judicial procedure with respect to surplus proceeds, see section 7426(b)(3)."

(h) APPLICATION OF PROCEEDS OF LEVY AND SALE.—Section 6342(a) (relating to collection of liability) is amended—

(1) by striking out so much of subsection (a) as precedes paragraph (1) and inserting in lieu thereof "Any money realized by proceedings under this subchapter (whether by seizure, by surrender under section 6332 (except pursuant to section 6332(b)(2)), or by sale of seized property) or by sale of property redeemed by the United States (if the interest of the United States in such property was a lien arising under the provisions of this title) shall be applied as follows:";

(2) by striking out "under this subchapter" in paragraph (1); and

(3) by adding "or the sale was conducted" after "levy was made" in paragraph (3).

(i) RETURN OF PROPERTY.—Section 6343 (relating to authority to release levy) is amended—

(1) by striking out the heading of such section and inserting in lieu thereof the following:

"SEC. 6343. AUTHORITY TO RELEASE LEVY AND RETURN PROPERTY.";

(2) by striking out "It shall be" and inserting in lieu thereof "(a) RELEASE OF LEVY.—It shall be"; and

(3) by adding at the end thereof the following new subsection:

"(b) RETURN OF PROPERTY.—If the Secretary or his delegate determines that property has been wrongfully levied upon, it shall be lawful for the Secretary or his delegate to return—

"(1) the specific property (other than money) levied upon,

"(2) an amount of money equal to the amount of money levied upon, or

"(3) an amount of money equal to the amount of money received by the United States from a sale of property pursuant to section 6335 or 6336.

Property (other than money) may be returned at any time. An amount equal to the amount of money levied upon or received from such sale may be returned at any time before the expiration of 9 months from the date of such levy. If property is declared purchased by the United States at a sale pursuant to section 6335(e) (relating to manner and conditions of sale) the minimum price shall be considered to be the amount received by the United States at the sale of such property."

(j) TECHNICAL AMENDMENT.—The table of sections for subchapter D of chapter 64 is amended by striking out—

"Sec. 6343. Authority to release levy."

and inserting in lieu thereof

"Sec. 6343. Authority to release levy and return property."

SEC. 105. STATUTORY LIEN FOR WITHHELD TAXES.

(a) EFFECT ON THIRD PARTIES.—Chapter 25 (relating to general provisions relating to employment taxes) of subtitle C is amended by adding at the end thereof the following:

"SEC. 3505. LIABILITY OF THIRD PARTIES PAYING OR PROVIDING FOR WAGES.

"(a) DIRECT PAYMENT BY THIRD PARTIES.—For purposes of sections 3102, 3202, 3402, and 3403, if a lender, surety, or other person, who is not an employer under such sections, pays wages directly to an employee or group of employees, employed by one or more employers, or to an agent on behalf of such employee or employees, such lender, surety, or other person shall be liable in his own person and estate to the United States in a sum equal to the taxes (together with interest) required to be deducted and withheld from such wages by such employer.

"(b) PERSONAL LIABILITY WHERE FUNDS ARE SUPPLIED.—If a lender, surety, or other person supplies funds to or for the account of an employer for the purpose of paying wages of the employees of such employer, with actual notice or knowledge that such employer does not intend to or will not be able to make timely payment or deposit of the amounts of tax required by this subtitle to be deducted and withheld by such employer from such wages, such lender, surety, or other person shall be liable in his own person and estate to the United States in a sum equal to the taxes (together with interest) which are not paid over to the United States by such employer with respect to such wages. However, the liability of such lender, surety, or other person shall be limited to an amount equal to 20 percent of the amount supplied to or for the account of such employer for such purpose.

"(c) EFFECT OF PAYMENT.—Any amounts paid to the United States pursuant to this section shall be credited against the liability of the employer.

"SEC. 3506. LIENS FOR WITHHELD TAXES.

"(a) GENERAL RULE.—If any taxes required by this subtitle to be deducted and withheld from wages paid by an employer to an employee for services performed in the construction, improvement, alteration, repair, replacement, or demolition of any real property under a contract in which the price exceeds $2,000 (including any building or fixture attached thereto), other than a single family dwelling occupied or to be occupied by the owner thereof, are not paid over to the United States, the United States shall have the same rights (including liens), remedies, and priorities against any person or property to collect such unpaid taxes as are provided by any law for the collection of such wages by such employee.

"(b) PERFECTION OF RIGHTS.—

"(1) IN GENERAL.—Except as otherwise provided in paragraph (3), the United States shall perfect, maintain, and enforce its rights (including liens), remedies, and priorities, with respect to any such taxes for each quarterly period for which a return was required, by taking the same actions required by law of such employee for the collection of such wages.

"(2) EFFECT OF ACTIONS BY UNITED STATES.—If the United States takes the same actions required by law of such employee for the collection of such wages within the time prescribed in paragraph (3), such actions shall be deemed to be timely for all purposes. The rights of the United States arising from such timely actions shall have the same priority as the rights of such employee would have if such employee had taken the same actions on the first day when such employee may take such actions.

"(3) TIME FOR FILING.—

"(A) GENERAL RULE.—Notwithstanding any other provision of law, the United States, with respect to amounts attributable to any calendar quarter, shall, except as provided in subparagraph (B), have the same period of time after the date when a return for such calendar quarter was required to be filed under section 6071 to meet any requirement of law as such employee, except that such period shall in no event be less than 30 days after the date when a return for such calendar quarter

was required to be filed, or 30 days after the date on which a return for such quarter was filed (whichever 30-day period is the later).

"(B) LIMITATION.—The period of time allowable to the United States, with respect to the first requirement of law to be satisfied, shall not exceed 6 months from the date when a return for a calendar quarter was required to be filed under section 6071.

"(4) FILING OF CERTIFICATES AND NOTICES.—If a certificate or notice required by law may not be filed by the United States in the office designated by State law for the filing of such a certificate or notice by such employee, such certificate or notice shall be effective if filed in the office of the clerk of the United States district court for the judicial district in which such office is situated.

"(c) EFFECT OF PAYMENT.—Any amounts paid to the United States pursuant to this section shall be credited against the liability of the employer. The person making such payments shall be relieved of any liability to the employer to the extent of such payments.

"(d) FORECLOSURE AGREEMENTS.—The Secretary or his delegate may enter into any agreement to extend or to waive any time limitation required by law to perfect, maintain, and enforce the rights (including liens), remedies, and priorities of the United States under this section.

"(e) CROSS REFERENCE.—For certificate releasing rights of the United States, see section 6325."

(c) PERFORMANCE BONDS OF CONTRACTORS FOR PUBLIC BUILDINGS OR WORKS.—The first section of the Act entitled "An Act requiring contracts for the construction, alteration, and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by an additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said public buildings or public work", approved August 24, 1935 (49 Stat. 793; 40 U.S.C. 270a), is amended by adding at the end thereof the following new subsection:

"(d) Every performance bond required under this section shall specifically provide coverage for taxes imposed by the United States which are collected, deducted, or withheld from wages paid by the contractor in carrying out the contract with respect to which such bond is furnished."

(d) TECHNICAL AMENDMENT.—The table of sections of chapter 25 of subtitle C is amended by adding at the end thereof the following:

"Sec. 3505. Liability of third parties paying or providing for wages.
"Sec. 3506. Liens for withheld taxes."

SEC. 106. SUSPENSION OF RUNNING OF PERIOD OF LIMITATION.

(a) ASSETS OF ESTATE OF DECEDENT OR INCOMPETENT.—Section 6503(b) (relating to assets of taxpayer in control or custody of court) is amended by striking out "(other than the estate of a decedent or of an incompetent)" and the phrase "or Territory".

(b) COLLECTION HINDERED BY ABSENCE OF TAXPAYER.—Section 6503(c) (relating to location of property outside the United States or removal of property from the United States) is amended to read as follows:

"(c) TAXPAYER OUTSIDE UNITED STATES.—The period of limitations on collection after assessment prescribed in section 6502 shall be suspended for any period during which the taxpayer is outside the United States and for 6 months thereafter."

(c) WRONGFUL SEIZURE OF PROPERTY OF THIRD PARTIES.—Section 6503(f) (relating to cross references) is amended by redesignating subsection (f) as subsection (g) and inserting after subsection (e) the following new subsection:

"(f) WRONGFUL SEIZURE OF PROPERTY OF THIRD PARTY.—The period of limitation on collection after assessment prescribed in section 6502 applicable to a taxpayer shall be suspended for a period equal to the period from the date property (including money) of a third party is wrongfully seized or received by the Secretary or his delegate to the date the Secretary or his delegate returns such property pursuant to section 6343 or the date of satisfaction by the Secretary or his delegate of a judgment secured pursuant to section 7426 with respect to such property, and for six months thereafter. The period of limitations on collection after assessment shall be suspended under this subsection only with respect to the amount of such assessment equal to the amount of money or the value of specific property returned."

SEC. 107. PROCEEDINGS WHERE UNITED STATES HAS TITLE TO PROPERTY.

(a) Action To Quiet Title.—Section 7402 (relating to jurisdiction of district courts) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) To Quiet Title.—The United States district courts shall have jurisdiction of any action brought to quiet title to property if the title claimed by the United States to such property was derived from enforcement of a lien under this title."

(b) Filing of Action.—Section 7403(a) (relating to filing action to enforce lien or to subject property to payment of tax) is amended—

(1) By striking out "In any case" and inserting in lieu thereof:

"(1) In general.—In any case"; and

(2) By inserting at the end thereof the following new paragraph:

"(2) Rights under section 3506.—The Attorney General or his delegate, at the request of the Secretary or his delegate, may direct a civil action be filed in a district court of the United States, or in any State court having jurisdiction of the property subject to such rights, to enforce the rights of the United States under section 3506."

(c) Sale Bids.—Section 7403(c) (relating to adjudication and decree) is amended by adding at the end thereof the following new sentence: "If property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of such lien with expenses of sale, as the Secretary or his delegate directs."

SEC. 108. INTERVENTION BY UNITED STATES.

Section 7424 (relating to civil action to clear title to property) is amended to read as follows:

"SEC. 7424. INTERVENTION.

"If the United States is not a party to a civil action or suit, the United States may intervene in such action or suit to assert any lien arising under this title on the property which is the subject of such action or suit. The provisions of section 2410 of title 28 of the United States Code (except subsection (b)) and of section 1444 of title 28 of the United States Code shall apply in any case in which the United States intervenes as if the United States had originally been named a defendant in such action or suit. In any case in which the application of the United States to intervene is denied, the adjudication in such civil action or suit shall have no effect upon such interest or lien."

SEC. 109. DISCHARGE OF LIENS HELD BY UNITED STATES.

Subchapter B of chapter 76 (relating to proceedings by taxpayers) is amended by redesignating section 7425 as section 7427 and by inserting after section 7424 the following new section:

"SEC. 7425. DISCHARGE OF LIENS.

"(a) Judicial Proceedings.—If the United States is not joined as a party, a judgment in any civil action or suit described in subsection (a) of section 2410 of title 28 of the United States Code, or a judicial sale pursuant to such a judgment, with respect to property in which the United States has or claims a lien under the provisions of this title—

"(1) shall be made subject to and without disturbing the lien of the United States, if notice of such lien has been filed in the place provided by law for such filing at the time such action or suit is commenced;

"(2) shall have the same effect with respect to the discharge or divestment of such lien of the United States as may be provided with respect to such matters by the local law of the place where such property is situated, if no notice of such lien has been filed in the place provided by law for such filing at the time such action or suit is commenced or if the law makes no provision for such filing.

If a judicial sale of property pursuant to a judgment in any civil action or suit to which the United States is not a party discharges a lien of the United States arising under the provisions of this title, the United States may claim, with the same priority as its lien had against the property sold, the proceeds (exclusive of costs) of such sale at any time before the distribution of such proceeds is ordered.

"(b) Nonjudicial Sales.—A sale of property in which the United States has or claims a lien, or a title derived from enforcement of a lien, under the provisions of this title, pursuant to an instrument creating a lien on such property—

"(1) shall, except as otherwise provided, be made subject to and without disturbing such lien or title, if notice of such lien or such title was filed or recorded in the place provided by law for such filing or recording more than 30 days before such sale and the United States is not given notice of such sale in the manner prescribed in subsection (c)(1);

"(2) shall have the same effect with respect to the discharge or divestment of such lien or such title of the United States, as may be provided with respect to such matters by the local law of the place where such property is situated, if—

"(A) notice of such lien or such title was not filed or recorded in the place provided by law for such filing more than 30 days before such sale,

"(B) the law makes no provision for such filing, or

"(C) notice of such sale is given in the manner prescribed in subsection (c)(1).

"(c) SPECIAL RULES.—

"(1) NOTICE OF NONJUDICIAL SALE.—Notice of a nonjudicial sale shall be given to the district director of internal revenue or his delegate for the district in which such sale is conducted, in writing, by registered or certified mail or by personal service, not less than 25 days prior to such sale. Such notice shall set forth with particularity the time, place, and terms of such sale, the nature of the interest or lien of the United States, the name and address of the delinquent taxpayer, the office of the district director of internal revenue who caused notice of a lien or instrument evidencing an interest to be filed against the property to be sold, and the date and place such notice of lien or such instrument was filed.

"(2) CONSENT TO SALE.—Notwithstanding subsection (b), a sale of property (pursuant to an instrument creating a lien on such property) in which the United States has or claims a lien, or a title derived from enforcement of a lien, under the provisions of this title shall discharge or divest such property of such lien or such title if the United States consents to the sale of such property free of such lien or title and the proceeds of such sale are paid to the parties legally entitled thereto.

"(d) REDEMPTION BY UNITED STATES.—

"(1) RIGHT TO REDEEM.—In the case of a sale of real property to which subsection (b) applies to satisfy a lien prior to that of the United States, the Secretary or his delegate may redeem such property within 120 days from the date of such sale.

"(2) AMOUNT TO BE PAID.—In any case in which the United States redeems real property pursuant to paragraph (1), the amount to be paid for such property shall be the amount prescribed by subsection (d) of section 2410 of title 28 of the United States Code.

"(3) CERTIFICATE OF REDEMPTION.—

"(A) IN GENERAL.—In any case in which real property is redeemed by the United States pursuant to this subsection, the Secretary or his delegate shall apply to the officer designated by local law, if any, for the documents necessary to evidence the fact of redemption and to record title to such property in the name of the United States. If no such officer is designated by local law or if such officer fails to issue such documents, the Secretary or his delegate shall execute a certificate of redemption therefor.

"(B) FILING.—The Secretary or his delegate shall, without delay, cause such documents or certificate to be duly recorded in the proper registry of deeds. If the State in which the real property redeemed by the United States is situated has not by law designated an office in which such certificate may be recorded, the Secretary or his delegate shall file such certificate in the office of the clerk of the United States district court for the judicial district in which such property is situated.

"(C) EFFECT.—A certificate of redemption executed by the Secretary or his delegate shall constitute prima facie evidence of the regularity of such redemption and shall, when recorded. transfer to the United States all the rights, title, and interest in and to such property acquired by the person from whom the Uinted States redeems such property by virtue of the sale of such property."

SEC. 110. PROCEEDINGS BY THIRD PARTIES AGAINST THE UNITED STATES.

(a) ACTIONS BY THIRD PARTIES.—Subchapter B of chapter 76 (relating to proceedings by taxpayers) is amended by inserting after section 7425 (as added by section 109 of this Act) the following new section:

"SEC. 7426. CIVIL ACTIONS BY PERSONS OTHER THAN TAXPAYERS.

"(a) ACTIONS PERMITTED.—Any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on property may bring a civil action against the United States in a district court of the United States if—

"(1) a levy has been made on such property and such levy would irreparably injure such interest or lien, or

"(2) such property has been sold pursuant to a levy or an argeement described in section 6325(b)(3) (relating to substitution of proceeds of sale for property) and such person's interest or lien has been transferred to the proceeds of such sale.

Paragraph (1) shall apply whether or not such property has been surrendered to the Secretary or his delegate and whether or not such property has been sold by the Secretary or his delegate.

"(b) ADJUDICATION.—The district court shall have jurisdiction to grant only such of the following forms of relief as may be appropriate in the circumstances:

"(1) INJUNCTION.—If a levy or sale would irreparably injure rights in property which the court determines to be superior to rights of the United States in such property, the court may grant an injunction to prohibit the enforcement of such levy or to prohibit such sale.

"(2) RECOVERY OF PROPERTY.—If the court determines that such property has been wrongfully levied upon, the court may—

"(A) order the return of specific property (other than money) if the United States is in possession of such property;

"(B) grant a judgment for the amount of money levied upon; or

"(C) grant a judgment for an amount not exceeding the amount actually received by the United States from the sale of such property.

"(3) SURPLUS PROCEEDS.—If the court determines that the interest or lien of any party to an action under this section was transferred to the proceeds of a sale of such property, the court may grant a judgment in an amount equal to all or any part of the amount of the surplus proceeds of such sale.

"(4) SUBSTITUTED SALE PROCEEDS.—If the Secretary or his delegate has entered into an agreement pursuant to section 6325(b)(3) (relating to substitution of proceeds of sale), the court may grant a judgment in an amount equal to all or any part of the amount held as a fund pursuant to such agreement.

"(c) VALIDITY OF ASSESSMENT.—For purposes of an adjudication under this section, the assessment of tax upon which the interest or lien of the United States is based shall be conclusively presumed to be valid.

"(d) LIMITATION ON RIGHTS OF ACTION.—No action other than an action under this section may be maintained against any officer or employee of the United States (or former officer or employee) or his personal representative with respect to any acts or threatened acts for which an action could be maintained under this section.

"(e) MISJOINDER.—If an action under this section, which could be brought against the United States, is improperly brought against any officer or employee of the United States (or former officer or employee) or his personal representative, the court shall order, upon such terms as are just, that the pleadings be amended to substitute the United States as a party for such officer or employee as of the time such action was commenced upon proper service of process on the United States.

"(f) PROVISION INAPPLICABLE.—The provisions of section 7422(a) (relating to prohibition of suit prior to filing claim for refund) shall not apply to actions under this section.

"(g) INTEREST.—Interest shall be allowed at the rate of 6 percent per annum—

"(1) in the case of a judgment pursuant to subsection (b)(2)(B), from the date the Secretary or his delegate receives the property wrongfully levied upon to the date of payment of such judgment;

"(2) in the case of a judgment pursuant to subsection (b)(2)(C), from the date of the sale of the property wrongfully levied upon to the date of payment of such judgment.

"(h) CROSS REFERENCES.—

"(1) For period of limitations, see section 6532(c)."

(b) PERIOD OF LIMITATIONS ON SUIT.—Section 6532 (relating to periods of limitation on suits) is amended by adding at the end thereof the following new subsection:

"(c) SUITS BY PERSONS OTHER THAN TAXPAYERS.—A civil action under section 7426 shall be allowed only if such action is begun before the expiration of 9 months from the date of the levy giving rise to such action. Any person who fails to begin an action within such period for relief which could be obtained against the United States under section 7426 shall be barred from obtaining such relief against the United States or any officer or employee of the United States (or former officer or employee) or his personal representative."

(c) PROHIBITION OF SUITS TO RESTRAIN ASSESSMENT OR COLLECTION.—Section 7421(a) (relating to prohibition of suits to restrain assessment or collection of tax) is amended to read as follows:

"(a) TAX.—Except as provided in sections 6212 (a) and (c), 6213(a), and 7426(b)(1), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed."

(d) TECHNICAL AMENDMENTS.—

(1) The heading of subchapter B of chapter 76 is amended to read as follows: "Proceedings by Taxpayers and Third Parties";

(2) The table of sections for subchapter B of chapter 76 is amended by striking out

"Sec. 7424. Civil action to clear title to property.
"Sec. 7425. Cross references."

and inserting in lieu thereof

"Sec. 7424. Intervention.
"Sec. 7425. Discharge of liens.
"Sec. 7426. Civil actions by persons other than taxpayers.
"Sec. 7427. Cross references."

(3) The table of subchapters for chapter 76 of subtitle F is amended by striking out

"SUBCHAPTER B. Proceedings by taxpayers."

and inserting in lieu thereof

"SUBCHAPTER B. Proceedings by taxpayers and third parties."

SEC. 111. SALE OF PROPERTY ACQUIRED BY UNITED STATES.

(a) PERSONAL PROPERTY ACQUIRED.—Section 7505 (a) (relating to sale of personal property purchased by the United States) is amended by striking out "purchased by the United States under the authority of section 6335(e) (relating to purchase for the account of the United States of property sold under levy)" and inserting in lieu thereof "acquired by the United States in payment of or as security for debts arising under the internal revenue laws".

(b) REAL PROPERTY REDEEMED.—Section 7506(a) (relating to person charged with administration of real estate acquired by the United States) is amended by striking out "for the payment of such debts," and inserting in lieu thereof "for the payment of such debts, or which has been redeemed by the United States,".

(c) TECHNICAL AMENDMENTS.

(1) The heading of section 7505 is amended by striking out "PURCHASED" and inserting in lieu thereof "ACQUIRED";

(2) The table of sections for chapter 77 of subtitle F is amended by striking out

"Sec. 7505. Sale of personal property purchased by the United States."

and inserting in lieu thereof

"Sec. 7505. Sale of personal property acquired by the United States."

SEC. 112. FUND FOR REDEMPTION OF REAL PROPERTY BY UNITED STATES.

(a) CREATION OF FUND FOR REDEMPTION OF REAL PROPERTY.—Subchapter A of chapter 80 (relating to application of internal revenue laws) is amended by adding at the end thereof the following new section:

"SEC. 7810. REVOLVING FUND FOR REDEMPTION OF REAL PROPERTY.

"(a) ESTABLISHMENT OF FUND.—There is established a revolving fund of $1,000,000, under the control of the Secretary or his delegate, which shall be

available without fiscal year limitation for all expenses necessary for the redemption of real property as provided in section 7425(d) and section 2410 of title 28 of the United States Code.

"(b) Reimbursement of Fund.—The fund shall be reimbursed from the proceeds of a subsequent sale of real property redeemed by the United States in an amount equal to the amount expended for such redemption. Any surplus proceeds from such sale shall be deposited in the Treasury as provided in section 7809(a).

"(c) System of Accounts.—The Secretary or his delegate shall maintain an adequate system of accounts for such fund and prepare annual reports on the basis of such accounts."

(b) Deposit of Money Received.—The first sentence of section 7809(a) (relating to deposit of collections) is amended by striking out "and 7654" and inserting in lieu thereof "7654 and 7810".

(c) Technical Amendment.—The table of sections of subchapter A of chapter 80 is amended by adding at the end thereof the following:

"Sec. 7810. Revolving fund for redemption of real property."

SEC. 113. EFFECTIVE DATE.

(a) General Rule.—Except as otherwise provided, the amendments made by this title shall apply after the date of enactment of this Act, regardless of when a lien or a title of the United States arose or when the lien or interest of any other person was acquired.

(b) Exceptions.—The amendments made by this title shall not apply in any case—

(1) in which a lien or a title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before the date of enactment of this Act; or

(2) in which such amendments would—

(A) impair a priority enjoyed by any person (other than the United States) holding a lien or interest prior to the date of enactment of this Act;

(B) operate to increase the liability of any such person; or

(C) shorten the time for bringing suit with respect to transactions occurring before the date of enactment of this Act.

(c) Certificates and Bonds for Withheld Taxes.—

(1) The amendments made by section 105(a) (relating to effect on third parties) shall apply only with respect to wages paid and contracts entered into after January 1, 1965.

(2) The amendments made by section 105(c) (relating to performance bonds of contractors for public buildings or works) shall apply to contracts entered into pursuant to invitations for bids issued after January 1, 1965.

(d) Civil Action To Clear Title to Property.—If, before the date of enactment of this Act, any person has commenced a civil action to clear title to property pursuant to section 7424 of the Internal Revenue Code of 1954 as in effect immediately before the enactment of this Act, such action shall be determined in accordance with section 7424 of such Code as in effect immediately before the enactment of this Act.

TITLE II—CONSENT OF UNITED STATES TO BE SUED IN ACTIONS AFFECTING PROPERTY IN WHICH IT HAS A LIEN OR INTEREST

SEC. 201. JOINDER OF UNITED STATES IN CERTAIN PROCEEDINGS.

Section 2410 of title 28 of the United States Code is amended by redesignating subsection (d) as subsection (e) and by striking out subsections (a), (b), and (c) and inserting in lieu thereof the following new subsections:

"(a) Under the conditions prescribed in this section and section 1444 of this title for the protection of the United States, the United States may be named a party in any civil action or suit in any district court or in any State court having jurisdiction of the subject matter—

"(1) to quiet title to,

"(2) to foreclose a mortgage or other lien upon,

"(3) to partition,

"(4) to condemn, or

"(5) of interpleader with respect to real or personal property on which the United States has or claims a mortgage or other lien.

"(b) The complaint or pleading shall set forth with particularity the nature of the lien of the United States. In actions or suits involving liens arising under the internal revenue law, the complaint or pleading shall include the name of the taxpayer whose liability created the lien and, if a noitce of the tax lien was filed, the identity of the internal revenue office which filed the notice, and date and place it was filed. In actions in the State courts service upon the United States shall be made by serving the process of the court with a copy of the complaint upon the United States attorney for the district in which the action is brought or upon an assistant United States attorney or clerical employee designated by the United States attorney in writing filed with the clerk of the court in which the action is brought and by sending copies of the process and complaint, by registered mail, or by certified mail, to the Attorney General of the United States at Washington, District of Columbia. In such actions the United States may appear and answer, plead or demur within sixty days after such service or such further time as the court may allow.

"(c) A judgment or decree in in such action or suit shall have the same effect respecting the discharge of the property from the mortgage or other lien held by the United States as may be provided with respect to such matters by the local law of the place where the court is situated. However, an action to foreclose a mortgage or other lien, naming the United States as a party under this section must seek judicial sale. A sale to satisfy a lien inferior to one of the United States shall be made subject to and without disturbing the lien of the United States, unless the United States consents that the property may be sold free of its lien and the proceeds divided as the parties may be entitled. Where a sale of real estate is made to satisfy a lien prior to that of the United States, the United States shall have one year from the date of sale within which to redeem, except that with respect to a lien arising under the internal revenue law the period shall be 120 days or the period allowable for redemption under State law, whichever is longer, and in any case in which, under the provisions of subsection (k) of section 1701 of title 12 and subsection (d) of section 1820 of title 38 of the United States Code, the right to redeem does not arise, there shall be no right of redemption. In any case where the debt owing the United States is due, the United States may ask, by way of affirmative relief, for the foreclosure of its own lien and where property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of its claim with expenses of sale, as may be directed by the head (or his delegate) of the department or agency of the United States, which has charge of the administration of the laws in respect of which the claim of the United States arises.

"(d) In any case in which the United States redeems real property, the amount to be paid for such property shall be the sum of—

"(1) the actual amount paid by the purchaser at such sale which in the case of a purchaser who is the holder of the lien being foreclosed shall include the amount of the obligation secured by such lien,

"(2) interest on the amount paid as (determined under paragraph (1)) at 6 percent per annum from the date of such sale, and

"(3) the amount (if any) equal to the excess of (A) the expenses necessarily incurred in connection with such property, over (B) the income from such property, and (C) a reasonable rental value of such property, to the extent such property is used by the purchaser."

SEC. 202. JURISDICTION AND VENUE IN CERTAIN ACTIONS AGAINST UNITED STATES.

(a) Jurisdictions in Proceedings Brought by Third Parties.—Section 1346 of title 28 of the United States Code is amended by adding at the end thereof the following new subsection:

"(e) The district courts shall have original jurisdiction of any civil action against the United States provided in section 7426 of the Internal Revenue Code of 1954."

(b) Venue in Proceedings Brought by Third Parties.—Section 1402 of title 28 of the United States Code is amended by adding at the end thereof the following new subsection:

"(c) Any civil action against the United States under subsection (e) of section 1346 of this title may be prosecuted only in the judicial district where the property is situated at the time of levy, or if no levy is made, in the judicial district in which the event occurred which gave rise to the cause of action."

SEC. 203. TIME FOR REMOVAL OF ACTIONS AGAINST UNITED STATES FROM STATE COURTS.

Section 1446(b) of title 28 of the United States Code is amended by adding at the end thereof the following new sentence: "In any action against the United States described in section 1444, a petition for removal may be filed within sixty days after receipt by the United States of a pleading, motion, order, or other paper from which it may first be ascertained that a particular issue is raised concerning the rights of the United States, which issue had not previously been raised in such action."

SEC. 204. EFFECTIVE DATE.

(a) General Rule.—Except as otherwise provided, the amendments made by this title shall apply after the date of the enactment of this Act.

(b) Time for Removal.—The amendments made by section 203 of this title (relating to time for removal) shall apply only with respect to cases in which the first pleading, motion, order, or other paper raising an issue concerning a right of the United States is served upon the United States after the enactment of this Act.

[H.R. 11290, 89th Cong., 1st sess.]

A BILL To amend the Internal Revenue Code of 1954 with respect to the priority and effect of Federal tax liens and levies, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE, ETC.

(a) Short Title.—This Act may be cited as the "Federal Tax Lien Act of 1965".

(b) Amendment of 1954 Code.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

TITLE I—PRIORITY AND EFFECT OF TAX LIENS AND LEVIES

SEC. 101. PRIORITY OF LIENS.

Section 6323 (relating to validity of tax liens against mortgagees, pledgees, purchasers, and judgment creditors) is amended to read as follows:

"SEC. 6323. VALIDITY AND PRIORITY AGAINST CERTAIN PERSONS.

"(a) Invalidity of Lien Without Notice.—Except as otherwise provided in this section, the lien imposed by section 6321 shall not be valid as against any purchaser, mechanic's lienor, judgment lien creditor, or holder of a security interest until notice thereof has been filed by the Secretary or his delegate—

"(1) Under state laws.—

"(A) Real property.—In the case of real property, in one office within the State, county or other governmental subdivision in which the property subject to the lien is situated, as designated by the laws of such State;

"(B) Personal property.—In the case of personal property, whether tangible or intangible, in one office in the State, county or other governmental subdivision in which the property is situated, as designated by laws of such State; or

"(2) With clerk of district court.—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State has not by law designated an office described in paragraph (1) or has designated more than one such office for the filing of such notice within the State, country or other governmental subdivision in which such property is situated; or

"(3) With clerk of district court for district of columbia.—In the office of the clerk of the United States District Court for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

"(b) Form of Notice.—The form of the notice (described in subsection (a)(1)) shall be established by the Secretary or his delegate. Such notice shall be valid notwithstanding any law regarding the form or content of a notice of lien.

"(c) Situs of Property Subject to Lien.—

"(1) Situs of property.—For purposes of subsection (a), property shall be deemed to be situated—

"(A) Real property.—In the case of real property, at its physical location;

"(B) Personal property.—In the case of personal property, whether tangible or intangible, at the residence of the taxpayer at the time such notice of lien is filed.

"(2) Residence.—For purposes of paragraph (1)(B)—

"(A) The residence of a corporation or partnership shall be deemed to be the place at which the principal executive office of the business is located.

"(B) The residence of a taxpayer whose residence is without the United States shall be deemed to be Washington, D.C.

"(d) Invalidity of Lien in Certain Cases.—Even though notice of a lien imposed by section 6321 has been filed as provided in subsection (a), such lien shall not be valid—

"(1) Securities.—With respect to a security (as defined in subsection (h)(1)), as against a holder of a security interest in, or purchaser of, such security for an adequate and full consideration in money or money's worth, if at the time such security interest arose (or was acquired from a previous holder) or at the time of such purchase such person did not have actual notice or knowledge of such lien;

"(2) Motor vehicles.—With respect to a motor vehicle (as defined in subsection (h)(5)), as against a purchaser of such motor vehicle for an adequate and full consideration in money or money's worth, if at the time of such purchase such purchaser did not have actual notice or knowledge of the existence of such lien and such purchaser, prior to obtaining such notice or knowledge acquires possession of such motor vehicle and does not thereafter relinquish possession of such motor vehicle to the seller or his agent;

"(3) Property purchased at retail.—With respect to tangible personal property purchased at retail, in the ordinary course of the seller's trade or business;

"(4) Property subject to possessory liens.—With respect to property subject to a lien under local law securing the reasonable price of the improvement, alteration, or repair of tangible personal property, as against a holder of such a lien, if such person is, and has been, continuously in posession of such property from the time such lien arose;

"(5) Attorneys' liens.—With respect to a judgment or an amount in settlement of a cause of action, as against an attorney who holds a lien under local law upon such judgment or amount, to the extent of his reasonable compensation for obtaining such judgment or procuring such settlement;

"(6) Real property tax and special assessment liens.—With respect to real property, as against a holder of a lien upon such property, if such lien is entitled under local law to priority over security interests in such property which are prior in time, and such lien—

"(A) secures the payment of a tax of general application levied by any taxing authority based upon the value of such property;

"(B) secures the payment of a special assessment imposed directly upon such property by any taxing authority, if such assessment is imposed for the purpose of defraying the cost of any public improvement; or

"(C) secures payment of charges for utilities or public services furnished to such property.

"(7) Certain insurance contracts.—With respect to a life insurance, endowment, or annuity contract owned by the person against whom is assessed the tax out of which such lien arose, as against the organization which is the insurer under such contract, at any time—

"(A) before organization had actual notice or knowledge of such lien;

"(B) after such organization had such notice or knowledge, with respect to advances (including contractual interest thereon) required to be made to maintain such contract in force automatically under an agreement entered into before such organization had such notice or knowledge;

"(C) after satisfaction of a levy pursuant to section 6332(b), unless and until the Secretary or his delegate delivers to such organization a new notice of the lien, executed after the dat of such satisfaction."

Paragraph (3) shall not apply to a purchase if at the time of the purchase the purchaser intends or knows that the purchase is intended to hinder, evade, or defeat the collection of any tax. Paragraph (5) shall not apply to any part of a judgment or of an amount in settlement of a cause of action which the Secretary or his delegate credits against any liability of the taxpayer under section 6402 (relating to authority to make credits or refunds).

"(e) PRIORITY OF INTEREST AND EXPENSES.—If the lien imposed by section 6321 is not valid as against a lien or security interest described in subsection (a) or (d) of this section, the priority of such lien or security interest shall, if local law or an agreement valid under local law so provides, extend to—

"(1) any interest upon the obligation secured,

"(2) the reasonable charges and expenses of an indenture trustee or agent holding the security interest for the benefit of the holder of the security interest,

"(3) the reasonable and necessary expenses, including attorney's fees, actually incurred in collecting or enforcing the obligation secured,

"(4) the reasonable and necessary costs of insuring, preserving, or repairing the property subject to such lien or insuring such security interest, and

"(5) amounts paid to satisfy a lien on such property, but only if such lien is entitled to priority over the lien imposed by section 6321.

"(f) FUTURE ADVANCES.—

"(1) DATE OF PRIORITY.—Except for purposes of this subsection and subsection (g), the priority of the lien imposed by section 6321, as against the holder of a security interest which arose (within the meaning of subsection (h)(4)(B)) prior to the filing pursuant to subsection (a) of notice of such lien, shall be determined as though such notice were filed 45 days after the date of actual filing or, if earlier, the first date on or after the date of filing of such notice on which holder had actual notice or knowledge of such lien.

"(2) OBLIGATORY ADVANCES.—Without regard to the date of disbursement, the priority of a security interest which arose prior to the filing pursuant to subsection (a) of notice of the lien imposed by section 6321 shall extend to disbursements made pursuant to a written contractual obligation in negotiable form or which runs to a person other than the taxpayer, if such obligation was undertaken prior to such filing and obligates the holder of such security interest to make such disbursements on the happening of an event beyond the control of such holder. The priority granted by this paragraph shall apply only with respect to—

"(A) property owned by the taxpayer and subject to the security interest within 45 days after such filing,

"(B) any other property (including money or rights to money), to the extent that the purchase, completion, production, or earning of such property was financed by such disbursements and such property was the security for such security interest, and

"(C) if the security interest is held by a surety and indemnifies the surety against a loss or liability arising from a surety obligation, the proceeds of a contract in connection with which the surety obligation was undertaken and any other property acquired by the taxpayer for the purpose of performing such contract.

"(3) COMPLETION ADVANCES.—

"(A) PRIORITY OF ADVANCES.—Without regard to the date of disbursement, the priority of a security interest which arose prior to the filing pursuant to subsection (a) of notice of the lien imposed by section 6321 shall extend to disbursements made to finance—

"(i) the purchase, construction, improvement, alteration, repair, or demolition of real property subject to the security interest,

"(ii) the performance or completion of a contract for the construction, improvement, alteration, repair, or demolition of real property, the proceeds of which are subject to the security interest, or

"(iii) the raising or harvesting of a crop or the raising of livestock.

"(B) Application of priority.—The priority granted by this paragraph shall apply only with respect to—

"(i) the property (including money or rights to money) the purchase, construction, improvement, alteration, repair, demolition, earning, raising or harvesting of which was financed by such disbursements,

"(ii) in the case of disbursements to which subparagraph (A)(i) applies, the proceeds of a contract for the use of such property, but only if such contract was entered into on or before the date on which the security interest arose, and

"(iii) in the case of disbursements to which subparagraph (A)(iii) applies, any other property owned by the taxpayer and subject to the security interest within 45 days after filing of notice of such lien.

"(4) Special rule.—This subsection shall apply only if all requisite actions under local law to protect the priority of such security interests are taken.

"(g) Priority Under Certain Financing Agreements.—If prior to the filing pursuant to subsection (a) of notice of the lien imposed by subsection 6321, a written financing agreement providing for loans on the security of or the purchase of accounts, contract rights, chattel paper, documents, notes, instruments or mortgages is entered into and is valid under local law, and all requisite actions under local law are taken to protect security interests or purchases under such financing agreement against a subsequent lien obtainable by legal or equitable proceedings on a simple contract, then such lender or purchaser shall have priority over the lien imposed by section 6321 with respect to all such security interests acquired or purchases made prior to—

"(1) 45 days after such filing of notice, or

"(2) if earlier, the first date on or after the date of such filing on which such lender or purchaser had actual notice or knowledge of such lien.

"(h) Definitions.—For purposes of sections 6323 and 6324—

"(1) Security.—The term 'security' means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

"(2) Purchaser.—Except as otherwise provided in this section, the term 'purchaser' means a person who, for adequate and full consideration in money or money's worth acquires an interest (other than a security interest) in property, including a lease on such property, a written executory contract to purchase or lease such property, or an option to purchase or lease such property or an interest therein, or an option to renew or extend the term of such a lease, provided the interest so acquired is valid under local law against subsequent purchasers without actual notice.

"(3) Mechanic's lienor.—The term 'mechanic's lienor' means any person who under local law has a lien on real property or on the proceeds of a contract relating to such property, for services, labor, or materials. If all requisite actions under local law are taken, whether prior or subsequent to the filing of notice of the lien imposed by section 6321, to perfect, maintain, and enforce such lien, such lien shall be deemed to have priority as against a lien imposed by section 6321, notice of which has been filed pursuant to subsection (a), on the earliest date it becomes valid under local law against subsequent purchasers without actual notice, but in no event before the commencement of the actual performance of the service or labor or supplying of material.

"(4) Security interest.—

"(A) Definition.—The term 'security interest' means any interest in property acquired by contract for an adequate and full consideration in money or money's worth for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability.

"(B) Effect.—A security interest shall be deemed to arise at the time when it becomes protected under local law as against a subsequent lien upon such property obtainable by legal or equitable proceedings on a simple contract.

"(5) MOTOR VEHICLE.—The term 'motor vehicle' means a self-propelled vehicle which is registered for highway use under the laws of any State or foreign country.

"(i) SPECIAL RULES.—

"(1) DISCLOSURE OF AMOUNT OF OUTSTANDING LIEN.—If a notice of lien has been filed pursuant to subsection (a), the Secretary or his delegate is authorized to provide by rules or regulations the extent to which, and the conditions under which, information as to the amount of the outstanding obligation secured by the lien may be disclosed.

"(2) ACTUAL NOTICE OR KNOWLEDGE.—For purposes of this subchapter and sections 3505 and 3506, an organization shall be deemed for purposes of a particular transaction to have actual notice or knowledge of any fact from the time such fact is brought to the attention of the individual conducting such transaction, and in any event from the time such fact would have been brought to such individual's attention if the organization had exercised due diligence.

"(3) CONSIDERATION IN MONEY OR MONEY'S WORTH.—For purposes of this subchapter, the term 'money or money's worth' shall include forbearance to sue or take other action to collect or enforce an antecedent debt or obligation.

"(4) SUBROGATION.—Any person having a contractual, equitable, or statutory right of subrogation to any lien or interest which has priority over a lien under section 6321 shall enjoy a like priority.

"(5) FIXTURES.—For purposes of this section, the priority of a security interest with respect to property shall extend to any property which is attached to and physically becomes an integral part of the property subject to such security interest."

SEC. 102. SPECIAL LIENS FOR ESTATE AND GIFT TAXES.

Section 6324 (relating to special liens for estate and gift taxes) is amended to read as follows:

"SEC. 6324. SPECIAL LIENS FOR ESTATE AND GIFT TAXES.

"(a) LIENS FOR ESTATE TAX.—Except as otherwise provided in subsection (c) (relating to exceptions)—

"(1) UPON GROSS ESTATE.—Unless the estate tax imposed by chapter 11 is sooner paid in full, or becomes unenforceable by reason of lapse of time, it shall be a lien upon the gross estate of the decedent for 10 years from the date of death, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien.

"(2) LIABILITY OF TRANSFEREES AND OTHERS.—If the estate tax imposed by chapter 11 is not paid when due, then the spouse, transferee, trustee (except the trustee of an employees' trust which meets the requirements of section 401(a)), surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042, inclusive, to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax. Any part of such property transferred by (or transferred by a transferee of) such spouse, transferee, trustee, surviving tenant, person in possession of property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, to a bona fide purchaser or a holder of a security interest, for an adequate and full consideration in money or money's worth shall be divested of the lien provided in paragraph (1) and a like lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, beneficiary, or transferee of any such person, except any part transferred to a bona fide purchaser or holder of a security interest for an adequate and full consideration in money or money's worth.

"(3) CONTINUANCE AFTER DISCHARGE OF EXECUTOR.—The provisions of section 2204 (relating to discharge of executor from personal liability) shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless such part of the gross estate (or any interest therein) has been transferred to a bona fide purchaser or holder of a security interest for an adequate and full consideration in money or money's worth, in which case such part

(or such interest) shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser or holder of a security interest, by the heirs, legatees, devisees, or distributees.

"(b) LIEN FOR GIFT TAX.—Except as otherwise provided in subsection (c) (relating to exceptions), unless the gift tax imposed by chapter 12 is sooner paid in full or becomes unenforceable by reason of lapse of time, such tax shall be a lien upon all gifts made during the calendar year for 10 years from the date such gifts are made. If the tax is not paid when due, the donee of any gift shall be personally liable for such tax to the extent of the value of such gift. Any part of the property comprised in the gift transferred by the donee (or by a transferee of the donee) to a bona fide purchaser or holder of a security interest for an adequate and full consideration in money or money's worth shall be divested of the lien herein imposed and the lien, to the extent of the value of such gift, shall attach to all the property (including after-acquired property) of the donee (or the transferee) except any part transferred to a bona fide purchaser or holder of a security interest for an adequate and full consideration in money or money's worth.

"(c) EXCEPTIONS.—

"(1) The lien imposed by subsection (a) or (b) shall not be valid—

"(A) with respect to any lien or interest described in section 6323(d) (relating to invalidity of lien in certain cases), or

"(B) as against a mechanic's lienor.

"(2) If a lien or security interest is entitled to priority over the lien imposed by subsection (a) or (b), such priority shall, if local law or an agreement valid under local law so provides, extend to the items described in section 6323(e) (relating to priority of interest and expenses).

"(d) CROSS REFERENCE.—For definitions of the terms 'purchaser', 'security interest', and 'mechanic's lienor', see section 6323(h)."

SEC. 103. CERTIFICATES RELATING TO LIENS.

(a) DETERMINATION OF VALUE OF INTEREST.—Section 6325(b) (relating to partial discharge of property from lien) is amended by striking out "fair market" in the sentence following paragraph (2)(B).

(b) SALE PROCEEDS SUBSTITUTED FOR DISCHARGED PROPERTY.—Section 6325(b) is further amended by adding at the end thereof the following new paragraph:

"(3) SUBSTITUTION OF PROCEEDS OF SALE.—Subject to such rules or regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to the lien if such property is sold and, pursuant to an agreement with the Secretary or his delegate, the proceeds of such sale are to be held as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as such liens and claims had with respect to the discharged property."

(c) EFFECT OF CERTAIN CERTIFICATES.—Section 6325 (relating to release of lien or partial discharge of property) is amended by striking out subsection (d), redesignating subsection (e) as subsection (h), and by inserting after subsection (c) the following new subsections:

"(d) SUBORDINATION OF LIEN.—Subject to such rules or regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of subordination of any lien imposed by this title upon any part of the property subject to such lien if—

"(1) there is paid over to the Secretary or his delegate an amount equal to the amount of the lien or interest to which the certificate subordinates the lien of the United States, or

"(2) the Secretary or his delegate believes that the amount realizable by the United States from the property to which the certificate relates, or from any other property subject to the lien, will ultimately be increased by reason of the issuance of such certificate and that the ultimate collection of the tax liability will be facilitated by such subordination.

"(e) NONATTACHMENT OF LIEN.—If the Secretary or his delegate determines that, because of confusion of names or otherwise, any person (other than the person against whom the tax was assessed) is or may be injured by the appearance that a notice of lien filed under section 6323 refers to such person, the Secretary or his delegate may issue a certificate that the lien does not attach to the property of such person.

"(f) Effect of Certificate.—

"(1) Conclusiveness.—Except as provided in paragraphs (2) and (3), if a certificate is issued pursuant to this section by the Secretary or his delegate and is filed in the same office as the notice of lien to which it relates (if such notice of lien has been filed) such certificate shall have the following effect:

"(A) in the case of a certificate of release, such certificate shall be conclusive that the lien covered by such certificate is extinguished;

"(B) in the case of a certificate of discharge, such certificate shall be conclusive that the property covered by such certificate is discharged from the lien;

"(C) in the case of a certificate of subordination, such certificate shall be conclusive that the lien or interest to which the lien of the United States is subordinated is superior to the lien of the United States; and

"(D) in the case of a certificate of nonattachment, such certificate shall be conclusive that the lien of the UnitedStates does not attach to the property of the person described in such certificate.

"(2) Revocation of certificate of release and nonattachment.—If the Secretary or his delegate determines that a certificate of release or nonattachment was issued erroneously or improvidently, or if any certificate provided in this section was issued pursuant to a collateral agreement entered into in connection with an offer in compromise under section 7122 which has been breached, and if the period of limitation on collection after assessment has not expired, the Secretary or his delegate may revoke such certificate and reinstate the lien as of its original effective date—

"(A) by mailing notice of such revocation to the last known address of the person against whom the tax was assessed, and

"(B) by filing notice of such revocation in the same office as the notice of lien to which it relates (if such notice of lien has been filed).

This paragraph shall not apply with respect to the interest of any person (other than the person against whom the tax was assessed), or a transferee of such interest, in any property with respect to which such person or his transferor has in good faith taken substantial action to his detriment with respect to such property in reliance upon such a certificate prior to the time he receives actual notice or knowledge of such revocation.

"(3) Certificates void under certain conditions.—Notwithstanding any other provision of this subtitle, the attachment of any lien imposed by this title to any property with respect to which a certificate of discharge or nonattachment has been issued shall not be barred if the person liable for the tax acquires or reacquires such property after such certificate has been issued.

"(g) Filing of Certificates and Notices.—If a certificate or notice issued pursuant to this section may not be filed in the office designated by State law in which the notice of lien imposed by section 6321 is filed, such certificate or notice shall be effective if filed in the office of the clerk of the United States district court for the judicial district in which such office is situated. If such certificate or notice is in the form prescribed by the Secretary or his delegate, the clerk of any United States district court shall accept such certificate or notice for filing."

(d) Technical Amendments.—

(1) Amendment of section 6325.—Paragraph (4) of section 6325(h) (relating to cross reference) (as redesignated by section 103(c) of this Act) is amended to read as follows:

"(4) For provisions relating to proceedings by third parties against the United States, see section 7426."

(2) Change of heading of section 6325.—Section 6325 is amended by striking out the heading and inserting in lieu thereof:

"SEC. 6325. CERTIFICATES RELATING TO LIENS."

(3) Amendment of table of sections.—The table of sections of subchapter C of chapter 64 is amended by striking out

"Sec. 6325. Release of lien and partial discharge of property."

and inserting in lieu thereof

"Sec. 6325. Certificates relating to liens."

SEC. 104. SEIZURE OF PROPERTY FOR COLLECTION OF TAXES.

(a) EFFECT OF LEVY.—Section 6331(b) (relating to seizure and sale of property by levy and distraint) is amended by inserting after the first sentence the following new sentence: "A levy shall extend only to property possessed and obligations existing at the time thereof."

(b) SURRENDER OF PROPERTY SUBJECT TO LEVY.—Section 6332 (relating to surrender of property subject to levy) is amended—

(1) by striking out "Any person" in subsection (a) and inserting in lieu thereof "Except as otherwise provided in subsection (b), any person";

(2) by striking out subsection (b) and inserting in lieu thereof the following new subsection:

"(b) SPECIAL RULE FOR LIFE ISURANCE AND ENDOWMENT CONTRACTS.—

"(1) IN GENERAL.—A levy on an organization with respect to a life insurance or endowment contract issued by such organization shall, without necessity for the surrender of the contract document, constitute a demand by the Secretary or his delegate for payment of the amount described in paragraph (2) and the exercise of the right of the person against whom the tax is assessed to the advance of such amount. Such organization shall pay over such amount 90 days after service of notice of levy. Such notice shall include a certification by the Secretary or his delegate that a copy of such notice has been mailed to the person against whom the tax is assessed at his last known address.

"(2) SATISFACTION OF LEVY.—Such levy shall be deemed to be satisfied if such organization pays over to the Secretary or his delegate the amount which the person against whom the tax is assessed could have had advanced to him by such organization on the date prescribed in paragraph (1) for the payment of such levy, increased by the amount of any advance (including contractual interest thereon) made to such person on or after the date such organization had actual notice or knowledge of the lien upon which such levy is based, other than an advance (including contractual interest thereon) made to maintain such contract in force automatically under an agreement entered into before such organization had such notice or knowledge.

"(3) ENFORCEMENT PROCEEDINGS.—The satisfaction of a levy under paragraph (2) shall be without prejudice to any civil action for the enforcement of any lien with respect to such contract."

(3) by redesignating subsection (c) as subsection (e);

(4) by inserting before subsection (e) as redesignated the following new subsections:

"(c) ENFORCEMENT OF LEVY.—".

"(1) EXTENT OF PERSONAL LIABILITY.—Any person who fails or refuses to surrender any property or rights to property, subject to levy, upon demand by the Secretary or his delegate, shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of taxes for the collection of which such levy has been made, together with costs and interest on such sum at the rate of 6 percent per annum from the date of such levy. Any amount (other than costs) recovered under this paragraph shall be credited against the liability for taxes and interest for the collection of which such levy was made.

"(2) PENALTY FOR VIOLATION.—In addition to the personal liability imposed by paragraph (1), if any person required to surrender property or rights to property fails or refuses to surrender such property or rights to property without just cause, such person shall pay a penalty equal to 50 percent of the amount recoverable under paragraph (1). No part of such penalty shall be credited against the tax liability for the collection of which levy was made.

"(d) EFFECT OF HONORING LEVY.—Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the Secretary or his delegate, surrenders such property or rights to property (or discharges such obligation) to the Secretary or his delegate (or who pays a liability under subsection (c)(1)) shall be discharged from any obligation or liability to the delinquent taxpayer with respect to such property or rights to property arising from such surrender or payment. In the case of a levy which is satisfied pursuant to subsection (b),

such organization shall also be discharged from any obligation or liability to any beneficiary arising from such surrender or payment."

(c) Property Exempt From Levy.—Section 6334(a) (relating to enumeration of property exempt from levy) is amended—

(1) by striking out "or Territory" in paragraph (4); and

(2) by adding at the end thereof the following new paragraph:

"(5) Certain annuity and pension payments.—Annuity or pension payments under the Railroad Retirement Act, benefits under the Railroad Unemployment Insurance Act, special pension payments received by a person whose name has been entered on the Army, Navy, and Air Force Medal of Honor roll (38 U.S.C. 562), and annuities based on retired or retainer pay under chapter 73 of title 10 of the United States Code."

(d) Publication of Notice of Sale.—The first sentence of section 6335(b) (relating to notice of sale of seized property) is amended to read as follows: "The Secretary or his delegate shall as soon as practicable after the seizure of the property give notice to the owner, in the manner prescribed in subsection (a), and shall cause a notification to be published in some newspaper published or generally circulated within the county wherein such seizure is made, or, if there be no newspaper published or generally circulated in such county, shall post such notice at the post office nearest the place where the seizure is made, and in not less than two other public places."

(e) Redemption Period.—Paragraph (1) of section 6337(b) (relating to period of redemption of real estate after sale) is amended by striking out "1 year" and inserting in lieu thereof "120 days".

(f) Preparation of Deed.—Section 6338(c) (relating to real property purchased by United States) is amended to read as follows:

"(c) Real Property Purchased by United States.—If real property is declared purchased by the United States at a sale pursuant to section 6335, the Secretary or his delegate shall at the proper time execute a deed therefor, and without delay, cause such deed to be duly recorded in the proper registry of deeds."

(g) Discharge of Junior Encumbrances.—Section 6339 (relating to legal effect of certificate of sale of personal property and deed of real property) is amended by adding at the end thereof the following new subsections:

"(c) Effect on Junior Encumbrances.—A certificate of sale of personal property given or a deed to real property executed pursuant to section 6338 shall discharge such property from all liens, encumbrances, and titles over which the lien of the United States upon which the levy was based had priority.

"(d) Cross References.—

"(1) For distribution of surplus proceeds, see section 6342(b).

"(2) For judicial procedure with respect to surplus proceeds, see section 7426(b)(3)."

(h) Application of Proceeds of Levy and Sale.—Section 6342(a) (relating to collection of liability) is amended—

(1) by striking out so much of subsection (a) as precedes paragraph (1) and inserting in lieu thereof "Any money realized by proceedings under this subchapter (whether by seizure, by surrender under section 6332 (except pursuant to section 6332(b)(2)), or by sale of seized property) or by sale of property redeemed by the United States (if the interest of the United States in such property was a lien arising under the provisions of this title) shall be applied as follows:";

(2) by striking out "under this subchapter" in paragraph (1); and

(4) by adding "or the sale was conducted" after "levy was made" in paragraph (3).

(i) Return of Property.—Section 6343 (relating to authority to release levy) is amended—

(1) by striking out the heading of such section and inserting in lieu thereof the following:

"SEC. 6343. AUTHORITY TO RELEASE LEVY AND RETURN PROPERTY.";

(2) by striking out "It shall be" and inserting in lieu thereof "(a) Release of Levy.—It shall be"; and

(3) by adding at the end thereof the following new subsection:

"(b) Return of Property.—If the Secretary or his delegate determines that property has been wrongfully levied upon, it shall be lawful for the Secretary or his delegate to return—

"(1) the specific property (other than money) levied upon,
"(2) an amount of money equal to the amount of money levied upon, or
"(3) an amount of money equal to the amount of money received by the "United States from a sale of property pursuant to section 6335 or 6336. Property (other than money) may be returned at any time. An amount equal to the amount of money levied upon or received from such sale may be returned at any time before the expiration of 9 months from the date of such levy. If property is declared purchased by the United States at a sale pursuant to section 6335(e) (relating to manner and conditions of sale) the minimum price shall be considered to be the amount received by the United States at the sale of such property."

(j) Technical Amendment.—The table of sections for subchapter D of chapter 64 is amended by striking out—

"Sec. 6343. Authority to release levy."

and inserting in lieu thereof

"Sec. 6343. Authority to release levy and return property."

SEC. 105. STATUTORY LIEN FOR WITHHELD TAXES.

(a) Effect on Third Parties.—Chapter 25 (relating to general provisions relating to employment taxes) of subtitle C is amended by adding at the end thereof the following:

"SEC. 3505. LIABILITY OF THIRD PARTIES PAYING OR PROVIDING FOR WAGES.

"(a) Direct Payment by Third Parties.—For purposes of sections 3102, 3202, 3402, and 3403, if a lender, surety, or other person, who is not an employer under such sections, pays wages directly to an employee or group of employees, employed by one or more employers, or to an agent on behalf of such employee or employees, such lender, surety, or other person shall be liable in his own person and estate to the United States in a sum equal to the taxes (together with interest) required to be deducted and withheld from such wages by such employer.

"(b) Personal Liability Where Funds Are Supplied.—If a lender, surety, or other person supplies funds to or for the account of an employer for the purpose of paying wages of the employees of such employer, with actual notice or knowledge that such employer does not intend to or will not be able to make timely payment or deposit of the amounts of tax required by this subtitle to be deducted and withheld by such employer from such wages, such lender, surety, or other person shall be liable in his own person and estate to the United States in a sum equal to the taxes (together with interest) which are not paid over to the United States by such employer with respect to such wages. However, the liability of such lender, surety, or other person shall be limited to an amount equal to 20 percent of the amount supplied to or for the account of such employer for such purpose.

"(c) Effect of Payment.—Any amounts paid to the United States pursuant to this section shall be credited against the liability of the employer."

(b) Performance Bonds of Contractors for Public Buildings or Works.—The first section of the Act entitled "An Act requiring contracts for the construction, alteration, and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by an additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said public buildings or public work", approved August 24, 1935 (49 Stat. 793; 40 U.S.C. 270a), is amended by adding at the end thereof the following new subsection:

> "(d) Every performance bond required under this section shall specifically provide coverage for taxes imposed by the United States which are collected, deducted, or withheld from wages paid by the contractor in carrying out the contract with respect to which such bond is furnished."

(c) Technical Amendment.—The table of sections of chapter 25 of subtitle C is amended by adding at the end thereof the following:

"Sec. 3505. Liability of third parties paying or providing for wages.
"Sec. 3506. Liens for withheld taxes."

SEC. 106. SUSPENSION OF RUNNING OF PERIOD OF LIMITATION.

(a) Assets of Estate of Decedent or Incompetent.—Section 6503(b) (relating to assets of taxpayer in control or custody of court) is amended by striking out "(other than the estate of a decedent or of an incompetent)" and the phrase "or Territory".

(b) COLLECTION HINDERED BY ABSENCE OF TAXPAYER.—Section 6503(c) (relating to location of property outside the United States or removal of property from the United States) is amended to read as follows:

"(c) TAXPAYER OUTSIDE UNITED STATES.—The period of limitations on collection after assessment prescribed in section 6502 shall be suspended for any period during which the taxpayer is outside the United States and for 6 months thereafter."

(c) WRONGFUL SEIZURE OF PROPERTY OF THIRD PARTIES.—Section 6503(f) (relating to cross references) is amended by redesignating subsection (f) as subsection (g) and inserting after subsection (e) the following new subsection:

"(f) WRONGFUL SEIZUE OF PROPERTY OF THIRD PARTY.—The period of limitation on collection after assessment prescribed in section 6502 applicable to a taxpayer shall be suspended for a period equal to the period from the date property (including money) of a third party is wrongfully seized or received by the Secretary or his delegate to the date the Secretary or his delegate returns such property pursuant to section 6343 or the date of satisfaction by the Secretary or his delegate of a judgment secured pursuant to section 7426 with respect to such property, and for six months thereafter. The period of limitations on collection after assessment shall be suspended under this subsection only with respect to the amount of such assessment equal to the amount of money or the value of specific property returned."

SEC. 107. PROCEEDINGS WHERE UNITED STATES HAS TITLE TO PROPERTY.

(a) ACTION TO QUIET TITLE.—Section 7402 (relating to jurisdiction of district courts) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) TO QUIET TITLE.—The United States district courts shall have jurisdiction of any action brought to quiet title to property if the title claimed by the United States to such property was derived from enforcement of a lien under this title."

(b) FILING OF ACTION.—Section 7403(a) (relating to filing action to enforce lien or to subject property to payment of tax) is amended—

(1) By striking out "In any case" and inserting in lieu thereof "(1) IN GENERAL.—In any case"; and

(2) By inserting at the end thereof the following new paragraph:

"(2) RIGHTS UNDER SECTION 3506.—The Attorney General or his delegate, at the request of the Secretary or his delegate, may direct a civil action be filed in a district court of the United States, or in any State court having jurisdiction of the property subject to such rights, to enforce the rights of the United States under section 3506."

(c) SALE BIDS.—Section 7403(c) (relating to adjudication and decree) is amended by adding at the end thereof the following new sentence: "If property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of such lien with expenses of sale, as the Secretary or his delegate directs."

SEC. 108. INTERVENTION BY UNITED STATES.

Section 7424 (relating to civil action to clear title to property) is amended to read as follows:

"SEC. 7424. INTERVENTION.

"If the United States is not a party to a civil action or suit, the United States may intervene in such action or suit to assert any lien arising under this title on the property which is the subject of such action or suit. The provisions of section 2410 of title 28 of the United States Code (except subsection (b)) and of section 1444 of title 28 of the United States Code shall apply in any case in which the United States intervenes as if the United States had originally been named a defendant in such action or suit. In any case in which the application of the United States to intervene is denied, the adjudication in such civil action or suit shall have no effect upon such interest or lien."

SEC. 109. DISCHARGE OF LIENS HELD BY UNITED STATES.

Subchapter B of chapter 76 (relating to proceedings by taxpayers) is amended by redesignating section 7425 as section 7427 and by inserting after section 7424 the following new section:

"SEC. 7425. DISCHARGE OF LIENS.

"(a) JUDICIAL PROCEEDINGS.—If the United States is not joined as a party, a judgment in any civil action or suit described in subsection (a) of section 2410

of title 28 of the United States Code, or a judicial sale pursuant to such a judgment, with respect to property in which the United States has or claims a lien under the provisions of this title—

"(1) shall be made subject to and without disturbing the lien of the United States, if notice of such lien has been filed in the place provided by law for such filing at the time such action or suit is commenced;

"(2) shall have the same effect with respect to the discharge or divestment of such lien of the United States as may be provided with respect to such matters by the local law of the place where such property is situated, if no notice of such lien has been filed in the place provided by law for such filing at the time such action or suit is commenced or if the law makes no provision for such filing.

If a judicial sale of property pursuant to a judgment in any civil action or suit to which the United States is not a party discharges a lien of the United States arising under the provisions of this title, the United States may claim, with the same priority as its lien had against the property sold, the proceeds (exclusive of costs) of such sale at any time before the distribution of such proceeds is ordered.

"(b) Nonjudicial Sales.—A sale of property in which the United States has or claims a lien, or a title derived from enforcement of a lien, under the provisions of this title, pursuant to an instrument creating a lien on such property—

"(1) shall, except as otherwise provided, be made subject to and without disturbing such lien or title, if notice of such lien or such title was filed or recorded in the place provided by law for such filing or recording more than 30 days before such sale and the United States is not given notice of such sale in the manner prescribed in subsection (c) (1);

"(2) shall have the same effect with respect to the discharge or divestment of such lien or such title of the United States, as may be provided with respect to such matters by the local law of the place where such property is situated, if—

"(A) notice of such lien or such title was not filed or recorded in the place provided by law for such filing more than 30 days before such sale,

"(B) the law makes no provision for such filing, or

"(C) notice of such sale is given in the manner prescribed in subsection (c) (1).

"(c) Special Rules.—

"(1) Notice of nonjudicial sale.—Notice of a nonjudicial sale shall be given to the district director of internal revenue or his delegate for the district in which such sale is conducted, in writing, by registered or certified mail or by personal service, not less than 25 days prior to such sale. Such notice shall set forth with particularly the time, place, and terms of such sale, the nature of the interest or lien of the United States, the name and address of the deliquent taxpayer, the office of the district director of internal revenue who caused notice of a lien or instrument evidencing an interest to be filed against the property to be sold, and the date and place such notice of lien or such instrument was filed.

"(2) Consent to sale.—Notwithstanding subsection (b), a sale of property (pursuant to an instrument creating a lien on such property) in which the United States has or claims a lien, or a title derived from enforcement of a lien, under the provisions of this title shall discharge or divest such property of such lien or such title if the United States consents to the sale of such property free of such lien or title and the proceeds of such sale are paid to the parties legally entitled thereto.

"(d) Redemption by United States.—

"(1) Right to redeem.—In the case of a sale of real property to which subsection (b) applies to satisfy a lien prior to that of the United States, the Secretary or his delegate may redeem such property within 120 days from the date of such sale.

"(2) Amount to be paid.—In any case in which the United States redeems real property pursuant to paragraph (1), the amount to be paid for such property shall be the amount prescribed by subsection (d) of section 2410 of title 28 of the United States Code.

"(3) Certificate of redemption—

"(A) In general.—In any case in which real property is redeemed by the United States pursuant to this subsection, the Secretary or his delegate shall apply to the officer designated by local law, if any, for

the documents necessary to evidence the fact of redemption aid to record title to such property in the name of the United States. If no such officer is designated by local law or if such officer fails to issue such documents, the Secretary or his delegate shall execute a certificate of redemption therefor.

"(B) FILING.—The Secretary or his delegate shall, without delay, cause such documents or certificate to be duly recorded in the proper registry of deeds. If the State in which the real propery redeemed by the United States is situated has not by law designated an office in which such certificate may be recorded, the Secretary or his delegate shall file such certificate in the office of the clerk of the United States district court for the judicial district in which such property is situated.

"(C) EFFECT.—A certificate of redemption executed by the Secretary or his delegate shall constitute prima facie evidence of the regularity of such redemption and shall, when recorded, transfer to the United States all the rights, title, and interest in and to such property acquired by the person from whom the United States redeems such property by virtue of the sale of such property."

SEC. 110. PROCEEDINGS BY THIRD PARTIES AGAINST THE UNITED STATES.

(a) ACTIONS BY THIRD PARTIES.—Subchapter B of chapter 76 (relating to proceedings by taxpayers) is amended by inserting after section 7425 (as added by section 109 of this Act) the following new section:

"SEC. 7426. CIVIL ACTIONS BY PERSONS OTHER THAN TAXPAYERS.

"(a) ACTIONS PERMITTED.—Any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on property may bring a civil action against the United States in a district court of the United States if—

"(1) a levy has been made on such property and such levy would irreparably injure such interest or lien, or

"(2) such property has been sold pursuant to a levy or an agreement described in section 6325(b)(3) (relating to substitution of proceeds of sale for property) and such person's interest or lien has been transferred to the proceeds of such sale.

Paragraph (1) shall apply whether or not such property has been surrendered to the Secretary or his delegate and whether or not such property has been sold by the Secretary or his delegate.

"(b) ADJUDICATION.—The district court shall have jurisdiction to grant only such of the following forms of relief as may be appropriate in the circumstances:

"(1) INJUNCTION.—If a levy or sale would irreparably injure rights in property which the court determines to be superior to rights of the United States in such property, the court may grant an injunction to prohibit the enforcement of such levy or to prohibit such sale.

"(2) RECOVERY OF PROPERTY.—If the court determines that such property has been wrongfully levied upon, the court may—

"(A) order the return of specific property (other than money) if the United States is in possession of such property;

"(B) grant a judgment for the amount of money levied upon; or

"(C) grant a judgment for an amount not exceeding the amount actually received by the United States from the sale of such property.

"(3) SURPLUS PROCEEDS.—If the court determines that the interest or lien of any party to an action under this section was transferred to the proceeds of a sale of such property, the court may grant a judgment in an amount equal to all or any part of the amount of the surplus proceeds of such sale.

"(4) SUBSTITUTED SALE PROCEEDS.—If the Secretary or his delegate has entered into an agreement pursuant to section 6325(b)(3) (relating to substitution of proceeds of sale), the court may grant a judgment in an amount equal to all or any part of the amount held as a fund pursuant to such agreement.

"(c) VALIDITY OF ASSESSMENT.—For purposes of an adjudication under this section, the assessment of tax upon which the interest or lien of the United States is based shall be conclusively presumed to be valid.

"(d) LIMITATION ON RIGHTS OF ACTION.—No action other than an action under this section may be maintained against any officer or employee of the United States (or former officer or employee) or his personal representative with respect

to any acts or threatened acts for which an action could be maintained under this section.

"(e) MISJOINDER.—If an action under this section, which could be brought against the United States, is improperly brought against any officer or employee of the United States (or former officer or employee) or his personal representative, the court shall order, upon such terms as are just, that the pleading be amended to substitute the United States as a party for such officer or employee as of the time such action was commenced upon proper service of process on the United States.

"(f) PROVISION INAPPLICABLE.—The provisions of section 7422(a) (relating to prohibition of suit prior to filing claim for refund) shall not apply to actions under this section.

"(g) INTEREST.—Interest shall be allowed at the rate of 6 percent per annum—

"(1) in the case of a judgment pursuant to subsection (b)(2)(B), from the date the Secretary or his delegate receives the property wrongfully levied upon to the date of payment of such judgment;

"(2) in the case of a judgment pursuant to subsection (b)(2)(C), from the date of the sale of the property wrongfully levied upon to the date of payment of such judgment.

"(h) CROSS REFERENCE.—

"(1) For period of limitations, see section 6532(c)."

(b) PERIOD OF LIMITATIONS ON SUIT.—Section 6532 (relating to periods of limitation on suits) is amended by adding at the end thereof the following new section:

(c) PROHIBITION OF SUITS TO RESTRAIN ASSESSMENT OR COLLECTION.—Section 7426 shall be allowed only if such action is begun before the expiration of 9 months from the date of the levy giving rise to such action. Any person who fails to begin an action within such period for relief which could be obtained against the United States under section 7426 shall be barred from obtaining such relief against the United States or any officer or employee of the United States (or former officer or employee) or his personal representative."

(c) PROHIBITION OF SUITS TO RESTRAIN ASSESSMENT OR COLLECTION.—Section 7421(a) (relating to prohibition of suits to restrain assessment or collection of tax) is amended to read as follows:

(a) TAX.—Except as provided in sections 6212 (a) and (c), 6213(a), and 7426(b)(1), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed."

(d) TECHNICAL AMENDMENTS.—

(1) The heading of subchapter B of chapter 76 is amended to read as follows: **"Proceedings by Taxpayers and Third Parties"**;

(2) The table of sections for subchapter B of chapter 76 is amended by striking out

"Sec. 7424. Civil action to clear title to property.
"Sec. 7425. Cross references."

and inserting in lieu thereof

"Sec. 7424. Intervention.
"Sec. 7425. Discharge of liens.
"Sec. 7426. Civil actions by persons other than taxpayers.
"Sec. 7427. Cross references."

(3) The table of subchapters for chapter 76 of subtitle F is amended by striking out

"SUBCHAPTER B. Proceedings by taxpayers."

and inserting in lieu thereof

"SUBCHAPTER B. Proceedings by taxpayers and third parties."

SEC. 111. SALE OF PROPERTY ACQUIRED BY UNITED STATES.

(a) PERSONAL PROPERTY ACQUIRED.—Section 7505 (a) (relating to sale of personal property purchased by the United States) is amended by striking out "purchased by the United States under the authority of section 6335(e) (relating to purchase for the account of the United States of property sold under levy)" and inserting in lieu thereof "acquired by the United States in payment of or as security for debts arising under the internal revenue laws".

(b) REAL PROPERTY REDEEMED.—Section 7506(a) (relating to person charged with administration of real estate acquired by the United States) is amended

by striking out "for the payment of such debts," and inserting in lieu thereof "for the payment of such debts, or which has been redeemed by the United States,".

(c) TECHNICAL AMENDMENTS.—

(1) The heading of section 7505 is amended by striking out **"PURCHASED"** and inserting in lieu thereof **"ACQUIRED"**;

(2) The table of sections for chapter 77 of subtitle F is amended by striking out.

"Sec. 7505. Sale of personal property purchased by the United States."

and inserting in lieu thereof

"Sec. 7505. Sale of personal property acquired by the United States."

SEC. 112. FUND FOR REDEMPTION OF REAL PROPERTY BY UNITED STATES.

(a) CREATION OF FUND FOR REDEMPTION OF REAL PROPERTY.—Subchapter A of chapter 80 (relating to application of internal revenue laws) is amended by adding at the end thereof the following new section:

"SEC. 7810. REVOLVING FUND FOR REDEMPTION OF REAL PROPERTY.

"(a) ESTABLISHMENT OF FUND.—There is established a revolving fund of $1,000,000, under the control of the Secretary or his delegate, which shall be available without fiscal year limitation for all expenses necessary for the redemption of real property as provided in section 7425(d) and section 2410 of title 28 of the United States Code.

"(b) REIMBURSEMENT OF FUND.—The fund shall be reimbursed from the proceeds of a subsequent sale of real property redeemed by the United States in an amount equal to the amount expended for such redemption. Any surplus proceeds from such sale shall be deposited in the Treasury as provided in section 7809(a).

"(c) SYSTEM OF ACCOUNTS.—The Secretary or his delegate shall maintain an adequate system of accounts for such fund and prepare annual reports on the basis of such accounts."

(b) DEPOSIT OF MONEY RECEIVED.—The first sentence of section 7809(a) (relating to deposit of collections) is amended by striking out "and 7654" and inserting in lieu thereof "7654 and 7810".

(c) TECHNICAL AMENDMENT.—The table of sections of subchapter A of chapter 80 is amended by adding at the end thereof the following:

"Sec. 7810. Revolving fund for redemption of real property."

SEC. 113. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as otherwise provided, the amendments made by this title shall apply after the date of enactment of this Act, regardless of when a lien or a title of the United States arose or when the lien or interest of any other person was acquired.

(b) EXCEPTIONS.—The amendments made by this title shall not apply in any case—

(1) in which a lien or a title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before the date of enactment of this Act; or

(2) in which such amendments would—

(A) impair a priority enjoyed by any person (other than the United States) holding a lien or interest prior to the date of enactment of this Act;

(B) operate to increase the liability of any such person; or

(C) shorten the time for bringing suit with respect to transactions occurring before the date of enactment of this Act.

(c) CERTIFICATES AND BONDS FOR WITHHELD TAXES.—

(1) The amendments made by section 105(a) (relating to effect on third parties) shall apply only with respect to wages paid and contracts entered into after January 1, 1965.

(2) The amendments made by section 105(c) (relating to performance bonds of contractors for public buildings or works) shall apply to contracts entered into pursuant to invitations for bids issued after January 1, 1965.

(d) CIVIL ACTION TO CLEAR TITLE TO PROPERTY.—If, before the date of enactment of this Act, any person has commenced a civil action to clear title to property pursuant to section 7424 of the Internal Revenue Code of 1954 as in effect immediately before the enactment of this Act, such action shall be determined in accordance with section 7424 of such Code as in effect immediately before the enactment of this Act.

TITLE II—CONSENT OF UNITED STATES TO BE SUED IN ACTIONS AFFECTING PROPERTY IN WHICH IT HAS A LIEN OR INTEREST

SEC. 201. JOINDER OF UNITED STATES IN CERTAIN PROCEEDINGS.

Section 2410 of title 28 of the United States Code is amended by redesignating subsection (d) as subsection (e) and by striking out subsections (a), (b), and (c) and inserting in lieu thereof the following new subsections:

"(a) Under the conditions prescribed in this section and section 1444 of this title for the protection of the United States, the United States may be named a party in any civil action or suit in any district court or in any State court having jurisdiction of the subject matter.

"(1) to quiet title to,

"(2) to foreclose a mortgage or other lien upon,

"(3) to partition,

"(4) to condemn, or

"(5) of interpleader with respect to real or personal property on which the United States has or claims a mortgage or other lien.

"(b) The complaint or pleading shall set forth with particularity the nature of the lien of the United States. In actions or suits involving liens arising under the internal revenue law, the complaint or pleading shall include the name of the taxpayer whose liability created the lien and, if a notice of the tax lien was filed. the identity of the internal revenue office which filed the notice, and date and place it was filed. In actions in the State courts service upon the United States shall be made by serving the process of the court with a copy of the complaint upon the United States attorney for the district in which the action is brought or upon an assistant United States attorney or clerical employee designated by the United States attorney in writing filed with the clerk of the court in which the action is brought and by sending copies of the process and complaint, by registered mail, or by certified mail, to the Attorney General of the United States at Washington, District of Columbia. In such actions the United States may appear and answer, plead or demur within sixty days after such service or such further time as the court may allow.

"(c) A judgment or decree in such action or suit shall have the same effect respecting the discharge of the property from the mortgage or other lien held by the United States as may be provided with respect to such matters by the local law of the place where the court is situated. However, an action to foreclose a mortgage or other lien, naming the United States as a party under this section, must seek judicial sale. A sale to satisfy a lien inferior to one of the United States shall be made subject to and without disturbing the lien of the United States, unless the United States consents that the property may be sold free of its lien and the proceeds divided as the parties may be entitled. Where a sale of real estate is made to satisfy a lien prior to that of the United States, the United States shall have one year from the date of sale within which to redeem, except that with respect to a lien arising under the internal revenue law the period shall be 120 days or the period allowable for redemption under State law, whichever is longer, and in any case in which, under the provisions of subsection (k) of section 1701 of title 12 and subsection (d) of section 1820 of title 38 of the United States Code, the right to redeem does not arise, there shall be no right of redemption. In any case where the debt owing the United States is due, the United States may ask, by way of affirmative relief, for the foreclosure of its own lien and where property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of its claim with expenses of sale, as may be directed by the head (or his delegate) of the department or agency of the United States which has charge of the administration of the laws in respect of which the claim of the United States arises.

"(d) In any case in which the United States redeems real property, the amount to be paid for such property shall be the sum of—

"(1) the actual amount paid by the purchaser at such sale which in the case of a purchaser who is the holder of the lien being foreclosed shall include the amount of the obligation secured by such lien,

"(2) interest on the amount paid (as determined under paragraph (1)) at 6 percent per annum from the date of such sale, and

"(3) the amount (if any) equal to the excess of (A) the expenses necessarily incurred in connection with such property, over (B) the income from such property, and (C) a reasonable rental value of such property, to the extent such property is used by the purchaser."

SEC. 202. JURISDICTION AND VENUE IN CERTAIN ACTIONS AGAINST UNITED STATES.

(a) JURISDICTION IN PROCEEDINGS BROUGHT BY THIRD PARTIES.—Section 1346 of title 28 of the United States Code is amended by adding at the end thereof the following new subsection:

"(e) The district courts shall have original jurisdiction of any civil action against the United States provided in section 7426 of the Internal Revenue Code of 1954."

(b) VENUE IN PROCEEDINGS BROUGHT BY THIRD PARTIES.—Section 1402 of title 28 of the United States Code is amended by adding at the end thereof the following new subsection:

"(c) Any civil action against the United States under subsection (e) of section 1346 of this title may be prosecuted only in the judicial district where the property is situated at the time of levy, or if no levy is made, in the judicial district in which the event occurred which gave rise to the cause of action."

SEC. 203. TIME FOR REMOVAL OF ACTIONS AGAINST UNITED STATES FROM STATE COURTS.

Section 1446(b) of title 28 of the United States Code is amended by adding at the end thereof the following new sentence: "In any action against the United States described in section 1444, a petition for removal may be filed within sixty days after receipt by the United States of a pleading, motion, order, or other paper from which it may first be ascertained that a particular issue is raised concerning the rights of the United States, which issue had not previously been raised in such action."

SEC. 204. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as otherwise provided, the amendments made by this title shall apply after the date of the enactment of this Act.

(b) TIME FOR REMOVAL.—The amendments made by section 203 of this title (relating to time for removal) shall apply only with respect to cases in which the first pleading, motion, order, or other paper raising an issue concerning a right of the United States is served upon the United States after the enactment of this Act.

The CHAIRMAN. The committee has received a statement on H.R. 11256 and H.R. 11290 from the Honorable Stanley S. Surrey, Assistant Secretary of the Treasury. Without objection, Mr. Surrey's statement will be made a part of the record at this point.

STATEMENT BY HON. STANLEY S. SURREY, ASSISTANT SECRETARY OF THE TREASURY, ON H.R. 11256 AND H.R. 11290

Mr. Chairman and members of the committee, I welcome this opportunity to urge prompt and favorable action on H.R. 11256, introduced by Chairman Mills, and H.R. 11290, introduced by Mr. Byrnes, nearly identical bills, which propose a "Federal Tax Lien Act of 1966." The proposed act is the first comprehensive revision and modernization of the provisions of the Internal Revenue Code relating to the priority of Federal tax liens over the interests of other creditors. Some of the present basic provisions of our lien law antedate the 1913 income tax, and others were adopted in 1913. Subsequent commercial developments have resulted in a variety of new security interests which the present tax lien provisions do not accommodate. Moreover, a number of technical defects in the operation of the lien procedure have accumulated over the years. In adapting the tax lien provisions of the code to present business practices, and in resolving a number of technical questions which have arisen over the past several years, the proposed act is in the best interests of both private enterprise and the Government.

In my statement I intend to cover only the highlights of the proposed act, as I am submitting a technical explanation discussing it in detail.

Background of bill

As you may know, the proposed comprehensive revision of the priority and effect of Federal tax liens was initiated by the American Bar Association and other interested industry groups. These groups have worked with the Treasury Department and the Internal Revenue Service for several years to perfect a bill which would represent a fair and desirable revision of the rules governing tax liens. I believe that, except for proposed section 3506 of H.R. 11256 relating to withholding taxes in the construction industry, which I will discuss later,

to which the construction industry has objected, all interested parties, including the Treasury, are in favor of the proposed act and agreed that it represents a careful and proper balancing of the interests of the Government and the needs of the business community.

Necessity for legislation

Even before World War II attempts were being made to prepare a uniform commerical code to bring together the best business laws and practices prevalent in the United States. The Uniform Commerical Code was finally completed in the early 1950's and has been widely adopted. The Uniform Commercial Code is an historic revision of the laws governing commercial practices in the United States. That revision in turn requires a revision of the rules governing Federal tax liens, as these rules play an important part in day-by-day commercial activity.

In addition, the present law of Federal tax liens had resulted, even prior to the widespread adoption of the Uniform Commercial Code, in a number of difficulties. Section 6321 of present law imposes a lien for any unpaid taxes upon all the property and rights to property of the taxpayer. The lien arises as of the time the tax is assessed and attaches to all property of the taxpayer then owned or thereafter acquired. The assessment of the tax occurs when the tax is entered upon the records of the district director. The occurrence of this act is not published and creditors are not in a position to learn that a lien exists. In order to limit the application of this unpublished lien section 6323(a) presently provides that a lien will not be valid against a "mortgagee, pledgee, purchaser, or judgment creditor" unless public notice of the tax lien has been filed.

The creation of a Federal tax lien which arises as of assessment, and the inapplicability of this lien, until publication, to a mortgagee, pledgee, purchaser, or judgment creditor have resulted in two major problems:

First, questions arise as to whether a particular person is a "mortgagee, pledgee, purchaser, or judgment creditor." For example, is a bank which engages in trusts receipts financing of inventory a mortgagee or pledgee of the inventory?

Second, other questions flow from the Supreme Court's rulings that, to qualify as a "mortgagee, pledgee, purchaser, or judgment creditor," the interest of the claimant must be "choate." The Court reasoned that when Congress said "mortgagee," for example, it was referring to the holder of a current, effective mortage in the traditional sense of that word, and not to some contractual right to obtain a mortgage at a future date. Thus, if A grants B a mortgage in certain real property to secure whatever amounts B may choose to loan to A in the future, B will not at that time be a "mortgagee" entitled to protection against a Federal tax lien as B is considered to merely have a right to become a mortgagee at a future date by loaning money to A. However, B's interest may be entitled under State law to protection against other creditors as a mortgage.

In addition, in some cases it may be inappropriate to grant a Federal tax lien priority even if notice of the lien has been filed. For example, it seems unreasonable to require someone purchasing securities to ascertain whether the seller has a Federal tax lien on file against him, and a rule affording protecting against a filed tax lien to a purchaser of securities without actual knowledge of the lien has long been a part of the code. The passage of time has indicated other situations where similar protection is appropriate.

Changes made by the bill

Expansion of persons protected against an unfiled Federal tax lien.—To solve the questions which have arisen as to whether certain persons are a "mortgagee, pledgee, purchaser, or judgment creditor" the bill expands the protected categories in order to avoid litigation over the technical label for a particular interest. Thus section 6323(a) is revised to provide that a Federal tax lien shall not be valid as against any purchaser, mechanics lienor, judgment lien creditor, or holder of a security interest until public notice of the lien has been filed by the Secretary or his delegate. Thus, mechanics' lienors and holders of security interests, which term would include pledgees and mortgagees, are given protection against unfiled Federal tax liens. The term "security interest" is one used in the Uniform Commercial Code. The proposed act would define the term broadly to encompass any interest in property acquired by contract for an adequate and full consideration for the purpose of securing payment or performance of an obligation or for indemnifying against any loss or liability.

Expansion of classes of property entitled to protection against a filed Federal tax lien.—Furthermore, certain interests are given priority—in effect a "superpriority"—over the Federal tax lien even if notice of that lien is filed. For example, under provisions of present law, a Federal tax lien is not valid against stocks or bonds, or a motor vehicle, even though notice has been filed, if the purchaser is without actual notice or knowledge of the existence of the lien. The proposed act will continue these rules, and grant a similar priority in the case of personal property purchased at retail; in the case of property subject to possessory liens, as in a case where a mechanic retains possession of an automobile until his bill for repairs is paid; in the case of attorneys' liens; in the case of real property tax and special assessment liens; and in the case of insurance contracts.

All these provisions solve problems which have arisen under present law. The rationale of these proposed rules is that it is not reasonable to expect one acquiring an interest in property in such cases to check on the existence of a Federal tax lien.

Expansion of classes of property entitled to protection against a filed Federal tax lien to encompass interests which are not technically "choate," but which are related to an earlier, protected, security interest.—As indicated above, for a mortgagee, for example, to be entitled to protection against an unfiled Federal tax lien his interest must be "choate," or clearly established. Where a mortgage is obtained which provides that, in addition to the amount loaned, the property is subject to accrued interest, and expenses such as attorneys' fees in the event of default, any right to interest and expenses is not "choate" as the amount of such a right is unknown. The mortgage debt would itself be prior to any unfiled Federal tax lien, but the filing of such a lien after the mortgage is obtained, and before the mortgagee's interests in accrued interest or expenses became "choate," would cut off the mortgagee's right to accrued interest and expenses even though such right would usually be protected against subsequently filed liens under State law.

To solve this problem a "superpriority" is granted to interest and expenses attributable to an obligation which is otherwise prior in right to the Federal tax lien. Thus such interest and expenses will be prior to a Federal tax lien even though notice of that lien was filed before the existence of a specific debt for interest and expenses.

Similarly, where a security interest has priority over a Federal tax lien because it arose before notice of the lien was filed, the priority of the security interest shall extend (and a "superpriority" shall be granted) to advances (obligatory advances) required to be made either under a contract which runs to a person other than a taxpayer, so as to protect a surety's claim for reimbursement for payments pursuant to a bond, or which is in negotiable form, as where a letter of credit is given by a bank. Furthermore, the priority of a security interest, such as a mortgage, which has priority over a Federal tax lien shall extend (and a "superpriority" shall be granted) to advances (completion advances) which are made to complete the construction or improvement of real property or the raising or harvesting of a crop or the raising of livestock. Accordingly, such advances will be prior to a Federal tax lien even though notice of that lien was filed before the advances were made and became "choate."

Expansion of classes of property entitled to protection against a filed Federal tax lien to encompass interests which are not technically "choate" and which are not related to an earlier, protected, security interest.—In some cases financing techniques are used under which a series of "choate" interests are to be created on a day-to-day basis. However, while part of the series not yet "choate" is cut off from protection against a Federal tax lien under present law as soon as notice of the lien is filed, it is not feasible to check each day to see if notice of a Federal tax lien has been filed.

To deal with this problem advances made under financing agreements providing for loans on the security of or the purchase of accounts, contract rights, chattel paper, documents, notes, instruments or mortgages, are given a 45-day grace period of priority. In other words, for the purpose of determining the priority of the lien arising under local law on these interests, as against a Federal tax lien, such local liens will be deemed to have priority if they arise within 45 days after the notice of Federal lien has been filed. If notice has not been filed they will, of course, be protected as security interests against the unfiled Federal lien.

As a practical matter this means, for example, in the case of a lender engaging in accounts receivable financing, that he need check with the local registrar for Federal tax liens against a borrower only every 45 days. If he checks, and no lien is on file, he will be assured that he can make loans on a day-to-day basis for 45 days as the accounts receivable are forwarded from the borrower, without fear that a Federal tax lien may be filed against the borrower and be prior in right to his advances. At the end of the 45-day period he can check the records of the local registrar again and determine whether to continue making advances for the next 45-day period.

In addition to these fundamental alterations in the present priority rules for Federal tax liens, the proposed act makes a series of technical changes to solve particular problems that have arisen over the years, many of which inconvenience, or even seriously hamper commercial activity. Moreover, specific rules are added governing suits against the United States when a third party has an interest in the property levied upon. The bill also makes various technical amendments to title 28 of the United States Code (relating to the judiciary and judicial procedure) to cure existing technical defects and simplify the procedure for litigating with the United States concerning title to property, as in connection with actions to partition or condemn property and actions in interpleader.

Some special problems

There are four provisions of the proposed act which are of special interest to the Treasury Department.

Under present law the only means of reaching a delinquent taxpayer's interest in an insurance contract is to bring a foreclosure action. However, this will terminate the policy and is a clumsy and lengthy proceeding. The proposed act establishes a procedure by which the Government can levy on a policyholder's interest in an insurance contract without extinguishing the policy by foreclosure. Thus, although the Government can obtain the taxpayer's interest in the policy, the policy itself may be continued by the beneficiary or other interested party.

The other three provisions of particular interest to the Treasury Department deal primarily with various aspects of collecting withholding taxes in the construction industry, and in the case of the provision dealing with "net payroll financing," in the garment industry as well.

As you know employers are required to withhold income and employment taxes from the wages of their employees, deposit these taxes monthly in a local depository, and file returns and pay any balance quarterly. Substantial problems have arisen with respect to the collection of these withholding taxes, often known as trust fund taxes, primarily in the construction industry.

First, where a contractor has overextended himself and is unable to complete a contract, a surety company, which has guaranteed his performance and is required to complete the job, is now able to arrange to discharge its obligation in a way which completely avoids the payment of the withholding taxes which otherwise would be due on the completion of the job. This technique is called net payroll financing. What happens is that the surety advances only the payroll net of withholding taxes to the contractor who continues to do the work to complete the job. However, the contractor is unable to pay the trust fund taxes attributable to the wages he has paid, for the surety company has provided no funds for that purpose and the contractor has none of his own. The assets of the contractor are usually heavily mortgaged in such cases, often to the surety, so that their seizure by the Internal Revenue Service results in practically no recovery. The courts have held that a promise to guarantee the payment of "wages" does not constitute a promise to guarantee the payment of withholding taxes attributable to those wages. Moreover, several courts have held that in such instances the surety company is not liable for the employment taxes under the Internal Revenue Code as it is not technically the "employer" in such a case. Thus, by using the bankrupt contractor as a middleman, surety companies have been able to honor their obligations under a surety contract without making provision for the payment of the Federal withholding tax liabilities which are a necessary concomitant of the completion of the job. The significant industries in which this practice has been used so far are the construction and garment industries.

To remedy this situation, the proposed act would impose liability upon all third parties paying or providing for wages in such instances. In light of the proposal for graduated withholding recently adopted by the House, the limita-

tion of liability under the proposed act to 20 percent of the funds provided for wages should be raised to 25 percent, to cover both income and employment tax withholding.

Second, as I have indicated, the courts have held that a promise of a surety to guarantee the payment of "wages" does not constitute a promise to guarantee the payment of withholding taxes. This has often resulted in a problem on Federal construction jobs inasmuch as the performance bonds now required do not insure against nonpayment of the Government's own taxes. The proposed act would amend the Miller Act (40 U.S.C. 270(a)) to require that performance bonds on Federal construction jobs specifically insure payment of the employment taxes incurred on that job. A similar amendment has been proposed in the past by Members of Congress.

These two provisions remedy these periodically troublesome problems. A third, and more general problem, is dealt with in H.R. 11256, but not H.R. 11290. H.R. 11256 provides, in proposed section 3506, that if taxes withhheld on wages paid to an employee for services performed in the construction of real property, where the contract price exceeds $2,000 (other than a single-family, owner-occupied dwelling), are not paid, the United States shall have the same rights (including liens), remedies and priorities against any person or property to collect such unpaid wages as are provided by any law for the collection of such wages by such employee.

This solution was developed as an alternative to an earlier proposal which imposed liability for any unpaid withholding taxes of an employer upon any person who contracted with the employer for the improvement of real property, except where such person obtained a certificate from the employer, executed under penalties of perjury, that such taxes had been paid. In our judgment this earlier proposal had some advantages over the present solution from the standpoint of those affected by the proposal, but either solution to this problem would be acceptable to the Treasury Department.

The problem here is a real one. All too frequently general contractors or subcontractors in the construction industry receive money to pay their employees, but, after deducting withholding taxes from the wages paid, do not turn these trust fund taxes over to the Federal Government. Although the construction industry is estimated to withhold only about 5.67 percent of the trust fund taxes collected annually from all employers, a recent study of current delinquencies showed that 26 percent of the dollar value of delinquent trust fund taxes was attributable to the construction industry. This 26 percent amounted to more than $55 million annually. I submit for the record a copy of a memorandum containing an analysis which was made by the Internal Revenue Service of trust fund delinquencies.

The provision of H.R. 11256, proposed section 3506, to which I refer, would give the United States the same rights with respect to unpaid trust fund taxes which the employee of a contractor, to whose wages the taxes apply, would have if his wages were not paid. All 50 States have mechanics' lien laws which, in different degrees and through different procedures, impose a liability for unpaid wages of construction workers upon the owner of real property to whose property the wages are attributable.

The adoption of proposed section 3506 would merely reinstate a responsibility of the owners of real property. When the withholding tax system was adopted in the early 1940's, owners of real property were inadvertently relieved of a portion of their obligation to see that all the wages of their contractor's employees were paid, inasmuch as they remained liable under State law only for the portion of the wages to be paid to the employees, and Federal law did not impose responsibility for the portion to be withheld and paid the United States.

The Federal Government should be in no worse position with respect to withheld taxes than a workman whose wages have not been paid. These withheld wages represent money that, were it not for tax withholding, would be owed and paid to the workman from whose wages the money was withheld. Thus, the funds which proposed section 3506 is intended to help collect do not in any sense belong to the withholding agent, and every reasonable step should be taken to insure the integrity of these trust funds. These trust fund taxes contribute value to the real property constructed just as do the labor materials which go into the building. Since the owner of the property receives the ultimate value of these taxes, it is reasonable to expect him to help insure that they are in fact paid.

As I have indicated, under State law if a contractor or subcontractor fails to pay his employees, even though funds have been provided to him by the owner of a building for such purpose, the employees may hold the owner of the building on which the work was performed responsible for the unpaid wages. It is the ordinary practice for persons contracting for construction work on their real property to take special steps to see that wages incurred on the job will be paid. The purpose of proposed section 3506 is to require that an owner of real property who is contracting for the construction of improvements on real property take the same steps to guarantee the payment of withholding taxes incurred on the job as he would to guarantee the payment of wages.

Often owners of real property protect themselves against any liability for unpaid wages by withholding 1 week's wages from the contractor until the work is completed. By withholding an additional amount equal to 1 week's wages the owner may also protect himself from any liability for unpaid taxes. In the alternative, the owner can simply pay the contractor the net wages owed to his workmen, and give the contractor a check payable to the United States for the withheld taxes to protect against any possible liability. Or a surety bond could be obtained by the owner. In the case of employees of subcontractors the property owner often shifts the risk of nonpayment of wages to the general contractor by contract. The general contractor could take steps similar to those mentioned above to protect himself against any liability which he may incur under an agreement with the owner of real property with respect to the unpaid, withheld, taxes of his subcontractor.

In view of the extremely high and entirely disproportionate trust fund tax delinquencies in the construction industry, despite concerted Internal Revenue Service efforts to cope with the problem under present procedures, some way must be found to assure the collection of these taxes. I urge the committee to schedule hearings on proposed section 3506, contained in H.R. 11256, so that the Treasury Department may present the reasons for this proposal in detail.

Summary

In summary, the Treasury Department is in favor of the proposed Federal Tax Lien Act of 1966 and recommends its adoption to the committee. The proposed act represents a sound balancing of the interests of the Government and of the business community and is needed to insure the proper functioning of our private credit system and the Government's tax collection activities. It also corrects a great variety of technical defects that have accumulated over the years. In addition, the Treasury Department urges that hearings be held on proposed section 3506 of H.R. 11256, designed to solve a pressing withholding tax collection problem in the construction industry, so that the committee may be advised of the details of this problem and the reasons for the proposal. As I said above, measures must be found to end the failure of this industry properly to account for the trust funds which it obtains through the withholding system.

TREASURY DEPARTMENT,
Washington, D.C. February 12, 1965.

U.S. Government Memorandum.

To: Stanley S. Surrey, Assistant Secretary.
From: Sheldon S. Cohen, Commissioner of Internal Revenue.
Subject: Trust fund tax collection in the construction industry.

Proposed section 3506 of H.R. 11256 (89th Cong., 1st sess.) deals with a serious problem in the collection of trust fund (income and employment) taxes from employers in the construction industry.

That the Internal Revenue Service has encountered serious difficulties in collecting trust fund taxes withheld by employers in the construction industry, which difficulties have not been overcome by remedies presently provided, is made clear by a study recently completely by the Service.

The attached tables are based on an analysis of all delinquent employment tax accounts in January 1965 by all district directors. These tables show:

(I) The percentage of employment tax returns (Federal Insurance Contributions Act taxes and income tax withholding) filed on form 941 without full payment which is allocable to the construction industry, and the dollar amount of the delinquency;

(II) The percentage of employment tax accounts attributable to the construction industry which is allocable to those of such accounts which are 1 year old or older, and the dollar amount of such accounts;

(III) The percentage of employment tax accounts which were written off as uncollectible in fiscal year 1964 which is allocable to the construction industry, and the dollar amount of accounts written off;

(IV) The percentage of employers having a history of delinquency in the employment tax area which is allocable to employers in the construction industry.

In brief summary, the tables reveal that, although the construction industry is estimated to pay only about 5.67 percent of trust fund taxes collected annually, 26 percent of the dollar value of delinquent trust fund taxes is attributable to the construction industry. Twenty-eight percent of the dollar value of trust fund taxes writen off in fiscal 1964 as uncollectible is attributable to the construction industry. Thus, $16,290,098 of trust fund taxes which should have been paid by the construction industry were written off as uncollectible in fiscal 1964.

Supplementing the statistical data obtained from the Service's recent study is the fact that, in the almost unanimous opinion of the 58 district directors of internal revenue all across the country, employers in the construction industry gave them the greatest difficulty in terms of number, frequency, dollar volume, and duration of delinquencies. No other industry group presents a problem of the same magnitude. The problem in the garment industry, the industry group which gives perhaps the next greatest amount of difficulty, is not nearly as great, and to a large extent that problem should be alleviated by the adoption of proposed section 3505 of the proposed Federal Tax Lien Act of 1966 which attacks the practice of "net payroll financing."

TABLE I.—*Delinquent form 941 accounts outstanding against construction industry employers—Current inventory, January 1965*

Region	Total number of form 941 accounts for all employers (1)	Number of form 941 accounts attributable to construction industry (2)	Percent, col. (2) to col. (1) (3)	Total dollar value of form 941 accounts for all employers (4)	Dollar value of form 941 accounts attributable to construction industry (5)	Percent, col. (5) to col. (4) (6)
National total	163,163	28,366	17	$210,950,140	$55,608,622	26
Southeast	22,479	5,077	23	16,876,204	5,081,987	30
Northeast [1]	10,108	1,567	16	11,691,950	2,458,032	21
Midwest	15,931	2,283	14	15,907,514	3,758,699	24
Central	17,014	2,744	16	25,825,352	5,446,497	21
Southwest	17,579	4,194	24	20,015,000	7,538,000	38
New York [1]	26,981	2,438	9	47,199,316	8,557,215	18
Mid-Atlantic	23,187	3,922	17	34,298,144	9,071,429	26
Western	27,790	5,744	21	38,253,118	13,370,617	35
Office of International Operations	2,394	397	17	883,542	326,146	37

[1] The Northeast and New York regions were consolidated in January 1965 under the name of North-Atlantic region.

NOTE.—Each account included in the figures appearing in col. (1) and col. (2) of table I represents a return filed on form 941 without full payment of the taxes shown thereon to be due. The number of accounts shown in col. (1) includes the number separately shown in col. (2). The dollar amounts shown in cols. (4) and (5) represent employment tax liabilities reported but not paid.

TABLE II.—*Form 941 accounts outstanding against employers in the construction industry for 1 year or more—Current inventory, January 1965*

Region	Total form 941 accounts attributable to construction industry (1)	Form 941 accounts attributable to construction industry which have been outstanding 1 year or more (2)	Percent, col. (2) to col. (1) (3)	Total dollar value of form 941 accounts attributable to construction industry (4)	Dollar value of form 941 accounts attributable to construction industry which have been outstanding 1 year or more (5)	Percent, col. (5) to col. (4) (6)
National total	28,366	9,785	34	$55,608,622	$29,730,508	53
Southeast	5,077	1,532	30	5,081,987	2,349,957	46
Northeast	1,567	472	30	2,458,032	1,149,610	47
Midwest	2,283	656	29	3,758,699	1,885,820	50
Central	2,744	1,100	40	5,446,497	3,326,135	61
Southwest	4,194	1,574	38	7,538,000	3,881,000	51
New York	2,438	1,073	44	8,557,215	5,546,035	65
Mid-Atlantic	3,922	1,413	36	9,071,429	5,049,234	56
Western	5,744	1,853	32	13,370,617	6,412,670	48
Office of International Operations	397	112	28	326,146	130,047	40

TABLE III.—*Form 941 accounts attributable to employers in the construction industry which were written off as uncollectible in fiscal year 1964*

Region	Total number of form 941 accounts written off as uncollectible for all employers (1)	Total number of form 941 accounts attributable to construction industry which were written off as uncollectible (2)	Percent col. (2) to col. (1) (3)	Total dollar value of form 941 accounts written off as uncollectible for all employers (4)	Dollar value of form 941 accounts attributable to construction industry which were written off as uncollectible (5)	Percent col. (5) to col. (4) (6)
National total	63,028	10,604	17	$57,604,521	$16,290,098	28
Southeast	9,691	1,695	17	5,223,196	1,493,683	29
Northeast	5,712	1,135	20	6,214,966	1,521,904	24
Midwest	6,471	1,036	16	5,937,454	1,852,089	31
Central	7,087	1,114	16	6,174,537	2,388,223	39
Southwest	6,851	1,603	23	5,157,000	2,116,000	41
New York	6,886	613	9	7,872,453	1,199,129	15
Mid-Atlantic	8,125	1,353	17	7,730,945	2,091,798	27
Western	11,985	1,978	17	13,199,651	3,580,657	27
Office of International Operations	220	77	35	94,319	46,615	49

NOTE.—Delinquent accounts are classified as uncollectible only when all efforts have been exhausted to locate income or assets of the taxpayer out of which collection can be effected. All such accounts are reviewed periodically and are reinvestigated, as deemed appropriate, to determine whether collection prospects have improved.

TABLE IV.—*Repeated delinquents in the construction industry—Current inventory, January 1965*

Region	Number of taxpayers with outstanding form 941 accounts who have history of prior delinquency (1)	Number of construction industry taxpayers with outstanding form 941 accounts who have history of prior delinquency (2)	Percent col. (2) to col. (1) (3)
National total	39, 098	10, 272	26
Southeast	6, 376	1, 748	27
Northeast	2, 600	657	25
Midwest	3, 048	830	27
Central	5, 084	968	19
Southwest	4, 568	1, 409	31
New York	3, 602	747	21
Mid-Atlantic	6, 450	1, 464	23
Western	6, 564	2, 246	34
Office of International Operations	806	203	25

NOTE.—All of the preceding tables reflect statistical data and percentage relationships in respect of delinquencies in payment. None of them pertain in any way to failure to file or to late filing. No data are available in these areas except such as has been obtained so far in the course of our taxpayer compliance measurement program, which planning and research is conducting. However, the data available show that in the southeast region, based on a survey conducted in the second quarter of 1963, 6.6 percent of the taxpayers who were required, but failed, to file form 941 for 1 or more quarters in 1962 were employers in the construction industry. These filing delinquencies account for 10.4 percent of the unreported employment tax dollars in that region for that year.

THE PROPOSED FEDERAL TAX LIEN ACT

H.R. 11256 and H.R. 11290, nearly identical bills, propose a Federal Tax Lien Act of 1966. H.R. 11256, which this memorandum will discuss, is divided into two titles. Titles I covers all changes to the Internal Revenue Code. Title II contains various amendments to title 28 of the United States Code (relating to judiciary and judicial procedure).

BACKGROUND

Section 6321 imposes a lien upon all the property and rights to property of a taxpayer for any unpaid taxes. The lien arises at of the time the tax is assessed ana attaches to property then owned or thereafter acquired. The assessment of the tax occurs when the tax is entered upon the records of the district director. The occurrence of this act is not published and creditors are not in a position to learn that the lien exists. In order to limit the priority of this unpublished lien, section 6323(a) provides that the tax lien will not be valid against a "mortgagee, pledgee, purchaser, or judgment creditor" unless notice of the tax lien has been filed. The fundamental problems in the tax lien area stem from judicial interpretations of section 6323(a).

First, questions sometimes arise as to whether a particular person is a "mortgagee, pledgee, purchaser, or judgment creditor." With the development of various new financing techniques in recent years, these problems have become somewhat more serious. For example, is a bank which engages in trust receipts financing of inventory a mortgagee or pledgee of the inventory? The bill is designed to expand the protected categories to avoid litigation over the technical label for a particular interest.

Far more questions flow from the Supreme Court's rulings that, to qualify under any of the terms listed in section 6323(a), the interest of the claimant must be "choate." The Court reasoned that when Congress said "mortgagee," for example, it was referring to the holder of a current, effective mortgage in the traditional sense of that word and not to some ill-defined contractual right to obtain a mortgage at a future date. Thus, if A grants B a mortgage in certain real property to secure whatever amounts B may later choose to loan to A, B will not be at that time a "mortgagee," within the meaning of section 6323. B is

considered to have merely a right to become a mortgagee at a future date by loaning money to A. This interest may well be entitled to protection under State law as a mortgage. Under the Court's decisions, however, even an unfiled Federal tax lien will be valid against that interest because it is inchoate.

The Supreme Court has ruled that for a mortgage to be choate the identity of the mortgagee, the property subject to the mortgage, and the amount of the mortgage must all be established. *U.S.* v. *City of New Britain* ((1954) 347 U.S. 81). The identity of the mortgagee is rarely a problem. Both of the other two requirements can cause practical problems. In the example discussed above, the amount of the mortgage is not established; therefore, the mortgage is inchoate. The choate test operates to deny priority in some very ordinary cases. For example, it is common for mortgages to provide that the costs of foreclosure in the event of default, including attorneys' fees, shall be added to the mortgage. Under most State laws such amounts are entitled to priority under the mortgage. However, if a Federal tax lien is filed after the mortgage but before the foreclosure, the tax lien will be junior to the mortgage itself but superior to the attorneys' fees. The courts hold that, to the extent of the attorneys' fees, the amount of the mortgage is not established and thus the mortgage is, to that extent, inchoate at the time the Federal tax lien is filed. *U.S.* v. *Pioneer American Insurance Co.* ((1963) 374 U.S. 84).

Similarly, the requirement that the property subject to the mortgage be established prior to the filing of notice of the Federal tax lien can cause problems. A common means of financing business is to make loans secured by inventory. It is equally common for such loans to provide for substitution of inventory. As inventory is sold, new inventory is purchased and is substituted under the mortgage for the inventory sold. State laws normally provide methods for making this substitution without jeopardizing the priority position of the lender. Under the choate test, however, if the property subject to the mortgage on the date the tax lien is filed is subsequently sold and new inventory substituted for the property sold, the Federal tax lien will have priority with respect to the new inventory. The property subject to the mortgage was not, to the extent of the substitution, established at the time notice of the tax lien was filed and the mortgage was to that extent inchoate.

The bill attempts to solve these problems by providing specific exceptions to the choate test in new subsections (f) and (g) of section 6323. The choate test is, however, retained.

In addition to these fundamental alterations in the present priority rules for Federal tax liens, the bill makes a series of technical changes to solve particular problems that have arisen over the years. The bill also provides certain new procedural rules concerning litigation over property in which the United States claims a tax lien.

SECTION 101. PRIORITY OF LIENS

Section 6323(a)

Present subsection (a) of section 6323 provides that a Federal tax lien for which no notice has been filed is invalid against a "mortgagee, pledgee, purchaser or judgment creditor." The terms "purchaser" and "judgment creditor" are retained without change. The term "holder of a security interest" would be substituted for "mortgagee" and "pledgee." Subsection (j)(4) of section 6323 defines "security interest" broadly to include traditional mortgages and pledges and to cover certain other interests which are not protected under present law. In addition, "mechanic's lienor" is added to the list of persons entitled to protection against unfiled tax liens. Mechanic's liens are not entitled to protection under present section 6323.

Present law reuires the Internal Revenue Service to file notice of a tax lien in an office designated by the State, if such a designation has been made. The proposed legislation makes it clear that a State may designate only one office for the filing of a notice of lien with repect to a single parcel of real property and one office for the filing of a notice of lien with respect to the personal property of a taxpayer. Thus, a State may not require the Internal Revenue Service to file notices with respect to various kinds of personal property in various State offices. At the time a notice of lien is filed the Internal Revenue Service frequently does not know what kinds of personal property a taxpayer owns, and therefore could not file as required. Furthermore, any State requirement for multiple filing of liens on personal property could create an impossible administrative burden.

Section 6323(b)

Subsection (b) of section 6323 of the proposed legislation provides that the Secretary or his delegate shall prescribe the form of the notice of a tax lien. Present law requires that the notice be in a form acceptable to the clerk of the local district court. In the interest of uniform application of this law, a delegation of the authority to the Secretary of the Treaury on this point seems preferable.

Section 6323(c)

Present section 6323 requires that the notice of lien be filed in the State in which the property subject to the lien is situated. Present law does not provide rules for determining the State in which property is situated. The proposed legislation specifies that the situs of real property is the place where it is physically located and the situs of all personal property is at the place where the taxpayer resides at the time the notice of lien is filed.

There is some confusion in the present case law concerning whether tangible personal property is situated at the place of its physical location or at the place of domicile or residence of the taxpayer. If personal property is considered located at its physical situs, it will be necessary for the Internal Revenue Service to seek out such property and file notices of the lien in several offices. This would be administratively burdensome for the Service and also makes it difficult and expensive for potential creditors to search the records for the existence of a tax lien. The proposed legislation would solve this problem by requiring that a notice of lien be filed only at the place of residence of the taxpayer in order to be valid against personal property.

The proposed legislation specifies that the residence of a corporation or partnership will be at the principal executive office of the business. In the case of a taxpayer who resides outside the United States, the notice of lien will be filed with the clerk of the district court for the District of Columbia.

This subsection will fix the situs of property for purposes of filing notices of Federal tax liens notwithstanding any State or Federal law to the contrary.

Section 6323(d)

Present law provides two instances in which a Federal tax lien is subordinated even after notice has been filed. A person acquiring an interest in a stock, bond or other security without actual knowledge of a tax lien takes such interest free and clear of any tax lien. Similarly, as the result of an amendment by the Revenue Act of 1964, the purchaser of a motor vehicle without actual knowledge of the existence of a tax lien takes free and clear of the tax lien. These two present exceptions are continued in the law without significant change by paragraphs (1) and (2) of section 6323(d).

The succeeding paragraphs of subsection (d) add various new exceptions to the priority of a Federal tax lien. It should be noted that the exceptions provided by subsection (d) grant superpriorities. The interests described in that subsection will prevail even over tax liens that arose and were filed before such interests were created.

Under present law if a notice of lien has been filed against a retail merchant, a purchaser of goods from the merchant takes those goods subject to the tax lien. This priority has been invoked only rarely. Nonetheless, it seems unrealistic to expect retail purchasers to check the lien records against their vendors. Indeed, to be fully protected a purchaser must check the records for liens against the manufacturer and every subsequent owner of the goods. Paragraph (3) of section 6323(d) provides therefore that the tax lien shall not be valid with respect to tangible personal property purchased at retail in the ordinary course of the seller's trade or business. In order to assure that this provision is not abused, the bill specifically provides that this exception will not apply if the purchase is intended to hinder, evade, or defeat the collection of tax.

Most States have statutes granting a lien to a mechanic for work on personal property so long as he retains possession of the property. For example, an auto mechanic is normally entitled to retain possession of an automobile until paid for work performed on the automobile. Paragraph (4) of section 6323(d) provides that a lien against property in the possession of a mechanic or artisan to secure payment for services shall have priority over a Federal tax lien, even if notice of the lien was filed before the work was performed.

Paragraph (5) of section 6323(d) grants priority over all Federal tax liens (filed and unfiled) to a lien provided by State law against a judgment or an

amount paid in settlement of a cause of action to the extent of the reasonable compensation of an attorney for securing such judgment or settlement.

Under State law real property taxes are usually given priority even over prior mortgages on the property. Such local real property tax liens are usually not superior to Federal tax liens, however, since they are not among the classes of interests entitled to protection against unfiled tax liens under section 6323(a). Serious problems of circular priority have resulted since the real property tax lien, though superior to a mortgage, will be junior to the Federal tax lien. The mortgage, on the other hand, may be superior to the Federal tax lien but junior to the real property tax lien. Paragraph (6) of section 6323(d) would grant priority to a lien securing real property taxes (including special assessments and charges for public utilities) over all Federal tax liens, whether or not filed, if such liens are granted "super" priority under State law. This change would avoid most of the circular priority problems referred to above.

During the past few years there has been a great deal of litigation concerning the rights of the Government to a taxpayer's interest in an insurance policy to which a tax lien has attached. Paragraph (7) of section 6323 is designed to resolve the problems that have arisen. It grants an insurance company, with respect to a life insurance, endowment, or annuity contract it has issued and which is subject to a tax lien, priority over all Federal tax liens (filed and unfiled) in three circumstances: first, priority with respect to all payments or advances made by the company before it has actual notice or knowledge of the tax lien; second, priority with respect to automatic premium loans (and interest thereon) if the automatic premium loan agreement was entered into by the company and the taxpayer before the company has actual notice or knowledge of the tax lien; and, third, with respect to any payment or advance made after the company had satisfied a levy under the new levy procedure provided in section 104(b) of the bill and before the company is served with another notice of tax lien.

Section 6323(e)

Mortgages frequently provide that any unpaid interest on the debt and various costs of foreclosing the mortgage will be added to the amount of the mortgage. Under the choate test, the courts have ruled that even though the amount originally loaned under a mortgage is entitled to priority over the Federal tax lien, amounts expended by the lender after the filing of notice of a Federal tax lien for attorneys' fees are inchoate and are not entitled to priority over the tax lien. See *U.S.* v. *Pioneer American Insurance Co.* (1963) 374 U.S. 84. Subsection (e) of the bill would change this result by expressly extending the priority of the underlying mortgage to interest (including finance charges) and foreclosure expenses (including reasonable attorneys' fees, costs of preserving the property and the costs of satisfying liens on the property which are superior to the Federal tax lien). The reference to attorneys' fees would include fees for establishing the priority of the security interest as well as for actually foreclosing.

Section 6323(f)

As indicated in the discussion of interest and foreclosure expenses, any amount which is advanced after the date on which a notice of Federal tax lien is filed, even though such amount is secured by a prior mortgage, is inchoate and junior to the Federal tax lien. Without some such limitation, a situation could arise in which a lender is able to loan money indiscriminately to a taxpayer long after the Internal Revenue Service has filed tax liens against the taxpayer and to give those additional advances the priority of an earlier mortgage. The choate requirement has thus served a useful and important purpose and would be retained by the bill. The rule has, however, created problems in the case of various legitimate financing arrangements. For example, where the operation of a business is being financed on the security of accounts receivable, it is common for a lender to make additional loans secured by new accounts receivable on virtually a daily basis. In order to be protected against Federal tax liens, it would be necessary for such a lender to check the public records for notices of lien before each advance is made. This is a practical impossibility. The proposed leigslation allows advances in certain limited situations to take priority over a Federal tax lien even though the advance is made after notice of the lien has been filed, but only if the advance is, under State law, protected by a mortgage or other security interest which arose prior to the date on which the Federal tax lien was filed.

Paragraph (1) of section 6323(f) provides a blanket rule allowing lenders to continue to make advances under a prior security interest for 45 days after the filing of notice of a Federal tax lien or until actual notice of the lien is received, if that occurs earlier. Similarly, substitutions of property subject to a prior security interest can be made at any time within the same period without loss of priority. For example, if a loan is secured by a lien on inventory, that inventory can be sold and replaced during the 45-day period without any loss of priority. Thus, by checking the records at intervals of not more than 45 days a lender can be fully protected.

Paragraph (2) of that subsection extends the priority of a prior security interest to advances made after notice of a tax lien has been filed if those advances are made pursuant to a binding contractual obligation running to a person other than the borrower (or pursuant to a negotiable instrument) if the contract was entered into (or the negotiable instrument was issued) prior to filing of notice of the tax lien. In order to prevent abuses of his privilege, the priority for obligatory advances made after filing of notice of the lien only applies against (1) property which is subject to the security interest within 45 days after the notice of lien is filed and (2) property which is purchased, constructed or earned with the funds advanced. This provision will give protection against the Federal tax lien to payments by a bank pursuant to a letter of credit issued before notice of the tax lien was filed. This provision will also protect surety companies for payments pursuant to a bond entered into before notice of a lien is filed. The priority of sureties would also be effective as against the proceeds of a contract in connection with which the bond was issued and any other property acquired by the taxpayer after the 45-day grace period for the purpose of performing that contract.

Finally, nonobligatory advances made after the filing of notice of a tax lien to complete the construction, etc., of a building or the raising or harvesting of a crop or livestock will take priority over the tax lien if the advances are secured by a mortgage or other security interest which arose prior to the filing of notice of the lien. Here again, however, the property out of which amounts advanced after the filing of a notice of lien can be collected is strictly limited. In the case of construction loans, such advances can be collected only out of (1) the property constructed or (2) the rents from a lease of such property, if the lease was entered into before the security interest arose. Advances relating to crops and livstock may be collected out of the crops or livestock and out of any other property which was owned by the taxpayer and subject to the security interest within 45 days after the filing of notice of the lien. For example, assume that a farmer borrows money to feed cattle and that he gives the lender a mortgage on the cattle and on his farm. Assume that a tax lien is subsequently filed and that additional advances are made by the lender to the farmer to feed the cattle. The lender's security interest in the cattle and farm will take priority over the Federal tax lien to the extent of the full amount loaned.

In addition, paragraph (3) of section 6323(f) gives similar protection to advances to enable a contractor to complete a contract for the construction of a building on real property. In such a case priority granted to the lender by this provision over the Federal tax lien only applies to a security interest in the proceeds of the construction contract.

The various provisions for priority in subsection (f) serve only to extend the priority of the underlying security interest. In no event will a creditor prevail over the tax lien unless applicable State law so provides.

The Supreme Court has repeatedly held that the determination of the meaning of "property" is a matter governed solely by State and local law. The proposed act is not intended to reflect in any one way on the question of what constitutes property. Furthermore, the changes in the law made by new subsection (f) of section 6323 of the Code are not intended to restrict the protection for creditors already available under present law. Thus, while certain so-called purchase money mortgages will be protected by the new subsection (f), any purchase money mortgage which is not covered by subsection (f) but which would have been protected by prior decisional law will continue to enjoy that protection.

Finally, nothing in this bill is intended to reverse *U.S.* v. *Munsey Trust Co.* (1947) 332 U.S. 234, which held that the United States may set off amounts due it for taxes against amounts owned by the United States to the taxpayer under a contract.

Section 6323(g)

This subsection provides rules similar to those provided by paragraph (1) of subsection (f). That paragraph would allow advances to be made for 45 days after the filing of a Federal tax lien if protected by a prior security interest. In some cases, however, such financing is conducted without taking a security interest, as for example by purchasing accounts receivable. Subsection (g) will give a 45-day grace period after the filing of a tax lien for lenders who are purchasing accounts receivable or making loans upon accounts receivable in reliance upon a prior financing agreement. As in the case of subsection (f)(1), the grace period will end before the expiration of 45 days if the lender has actual notice or knowledge of the existence of the lien.

Section 6323(h)

This subsection contains definitions applicable to all of section 6323. The definition of the term "security" is carried over from present law and includes bonds, stocks and other forms of commercial paper.

Paragraph (2) adds to the law a definition of the term "purchaser," which is one of the classes of persons against whom a tax lien is invalid until filed. This definition makes it clear that the term "purchaser" includes the holder of an executory contract or option to purchase or lease property and the holder of a lease.

Paragraph (3) of this subsection provides a definition of the term "mechanic's lienor," which is a new class of creditors added to subsection (a) against whom the tax lien will be invalid until filed. In general, this definition conforms to the definition of "mechanic's lienor" under State laws.

Paragraph (4) of subsection (h) defines the term "security interest," which is the other new class of interests in property against which the tax lien is invalid until filed. This class will include interests covered by the present terms "mortgagee" and "pledgee." With the development in recent years of new kinds of financing devices, there have been an increasing number of disputes over whether such devices qualify as mortgages or pledges under section 6323(a). The definition of the term "security interest" in the proposed legislation, which differs significantly from the definition of that term in the Uniform Commercial Code, is broad enough to encompass all contractual security arrangements and should avoid future litigation on this point. In order to fix the date as of which such security interests come into being vis-a-vis the Federal tax lien, the proposed legislation provides that the security interest will be deemed to arise at the time when it becomes protected under local law as against subsequent contractual liens against the property.

The definition of "motor vehicle" which was added to section 6323 by the Revenue Act of 1964 has been carried over into the proposed legislation as paragraph (5) of section 6323(h).

Section 6323(i)

This subsection provides special rules designed to solve certain technical problems that have arisen under present law. Paragraph (1) continues the provision of present section 6323(d) which specifically authorizes the Secretary or his delegate to make available to appropriate persons information as to liens against a taxpayer.

Paragraph (2) of subsection (i) provides rules for determining the circumstances under which knowledge of a tax lien on the part of one employee of a business organization will be chargeable to other employees of the organization. It states that the employees of an organization will not be charged with knowledge of another employee unless that knowledge has come to the attention of the responsible individual acting for the organization in the transaction in question. The individual will, however, be deemed to have knowledge of the existence of the lien from the time when that information would have been brought to the attention of the individual involved had the organization exercised due diligence. An organization will be deemed to have exercised due diligence if it has maintained reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

Under the proposed legislation, in order for certain interests to take priority over the Federal tax lien, they must have been received for consideration "in

money or money's worth." Paragraph (3) makes it clear that forbearance to sue or collect a debt can constitute valid consideration in money or money's worth. Thus, a general creditor who receives a mortgage in exchange for his agreement not to bring suit to collect his debt will be deemed to have received such mortgage for consideration in money or money's worth, but only to the extent that applicable local law would treat such forbearance as consideration.

Paragraph (4) provides that a person who is subrogated to the rights of a creditor will have the same rights against the Federal tax lien as the person to whose rights he is subrogated. This is declarative of present law.

Paragraph (5) provides that the priority of a mortgage extends to property which is attached to and physically becomes a part of property subject to a security interest. Thus, a mortgage on real property will give the mortgagee rights in any fixtures attached to the real property, even though the fixtures are attached after the date on which a Federal tax lien is filed.

SECTION 102. SPECIAL LIENS FOR ESTATE AND GIFT TAXES

Section 6324

In general, the provisions relating to estate and gift tax liens have been continued from present law. The classes of interests which are entitled to protection against the estate and gift tax liens have been modified to conform to the changes made in section 6323(a). Thus, mechanic's lienors will be protected against estate and gift tax liens. In addition, the term "holder of a security interest" has been substituted for the present terms "mortgagee" and "pledgee."

Under present law estate and gift tax liens have a life of 10 years. The Internal Revenue Code has long provided, however, that a tax is collectible for only 6 years after assessment, unless the taxpayer agrees to an extension of that period. Thus, estate and gift tax liens may exist after the tax has ceased to be collectible. The bill amends the language of section 6324 to make clear that the lien ceases to exist when the tax becomes uncollectible.

Finally, section 6324 has been amended to make estate and gift tax liens invalid against any of the liens which are entitled to "superpriority" over the income tax lien. This exception will grant priority to all the interests listed in section 6323(d) which includes the interest of purchasers at retail, attorney's liens, real property tax liens, etc. In addition, the priority granted to interest and foreclosure expenses by section 6323(e) will apply against estate and gift tax liens.

SECTION 103. CERTIFICATES RELATING TO LIENS

Section 6325. Release of lien or partial discharge of property

Present section 6325 provides for a lien to be released, thereby extinguishing the lien itself, or for property subject to a lien to be discharged, thereby freeing that property from the lien. In the latter case the lien continues to exist. The Internal Revenue Service normally issues certificates releasing the lien whenever the tax liability underlying the lien has been paid or has become legally unenforcible. Certificates of partial discharge are used to facilitate the transfer of property. For example, if a taxpayer wishes to sell property in order to pay the tax, he can arrange with the Internal Revenue Service to obtain for the purchaser a certificate discharging the property from the tax lien if the taxpayer pays over to the Internal Revenue Service an appropriate part of the proceeds of the sale. The power to issue these certificates has proved helpful in arranging for the orderly payment of delinquent taxes and the prompt clearing of title to property after notice of a lien has been filed. In order to allow even more flexibility for the Internal Revenue Service to cooperate with delinquent taxpayers and other creditors in the collection of taxes, the bill grants certain new powers to the Secretary or his delegate.

Section 6325(b)(3) allows the Secretary or his delegate to discharge certain property from a lien if it is sold and the proceeds are held as a fund subject to the same rights as the United States had in the property discharged. In the event of a dispute with a third party over rights to certain property, this provision will allow the property to be sold and the proceeds held subject to subsequent court action.

Subsection (d) of section 6325, which would be added by the bill, empowers the Secretary or his delegate to issue a "certificate of subordination" subordinating the lien of the United States to a subsequent lien on the property under two circumstances. First, the tax lien can be subordinated if the amount of

the lien to which the tax lien is subordinated is paid over to the Secretary or his delegate. For example, if the taxpayer wishes to borrow funds to pay a part of the tax, the new provision would allow the district director to grant priority over the tax lien to a mortgage securing that loan, if the proceeds of the loan are paid over in partial satisfaction of the tax liability.

Second, the new subsection (d) would allow subordination of the tax lien to a subsequent security interest if the district director believes that the amount of money realized by the Federal Government will be increased and that collection of the tax will be facilitated by the subordination. Occasionally a situation arises where it is esssential to the Government that the taxpayer be allowed to obtain additional credit. Assume, for example, that the taxpayer's only asset is a growing crop and that the taxpayer lacks the funds necessary to harvest the crop. In these circumstances, if the taxpayer is unable to borrow the money necessary to harvest the crop, the Government may be unable to collect any part of its tax liability. Nonetheless, because of the priority of the Federal tax lien, a private lender would normally refuse to make such a loan. Under the proposed language of section 6325(d)(2) the district director could under those circumstances issue to a lender a certificate of subordination which would grant priority to the amount loaned over the Federal tax lien. The issuance of such a certificate would be discretionary with the Secretary or his delegate and proper controls could be set up to assure that the funds are used for the intended purpose.

Proposed subsection (e) of section 6325 provides for a certificate of nonattachment. This certificate would be used in the event of confusion because of the similarity of names or otherwise and would state that a particular tax lien never attached to the property of a named individual. Instances of such confusion occasionally occur and the code does not at present provide any reliable means for ending the confusion.

New subsection (f) provides specific rules for the first time for determining the precise effect of any such certificates issued by the district director. In general, if such a certificate is filed in the same office in which the notice of lien is filed, it will be binding on the Government and can be relied upon by creditors. Paragraph (2) provides, however, that if a certificate of release or nonattachment was issued erroneously or improvidently or if such a certificate was issued in connection with an offer in compromise which is ultimately breached, the Secretary or his delegate may revoke the certificate and reinstate the lien by mailing notice of the revocation to the taxpayer and by filing a notice of the revocation in the same office as the notice of lien to which it relates. This revocation will not be effective, however, to reinstate the lien against any person (other than the taxpayer) who has taken substantial action to his detriment in reliance upon the certificate of release or nonattachment. Paragraph (3) of subsection (f) makes it clear that a certificate of discharge or nonattachment would not prevent the lien from attaching to property which is later acquired or reacquired by the taxpayer. This paragraph is declarative of present law.

Finally, subsection (g) provides that, notwithstanding the usual requirement that a certificate or notice of revocation must be filed in the same office in which the notice of lien is filed, if the officer designated by State law refuses to accept a certificate or notice provided for by this section, such certificate or notice may be filed with the clerk of the district court for that district.

SECTION 104. SEIZURE OF PROPERTY FOR COLLECTION OF TAXES

Secion 6331. Levy and distraint

A minor amendment would be made to section 6331. That section presently provides authority for the Secretary or his delegate to seize property and to levy upon property in order to collect taxes. A sentence would be added to section 6331(b) to make it clear that a levy upon a debtor of the taxpayer applies only to property of the taxpayer in the possession of the debtor at the time of the levy. For example, if a levy is served upon a bank and the bank pays over to the district director the amount of money in the taxpayer's account at the time of the levy, a question has been raised as to whether the levy applies to subsequent deposits and the bank is thereby prohibited from honoring checks drawn against the subsequent deposits. The proposed language would make it clear that the original levy was fully satisfied by delivery to the district director of all funds due the taxpayer by the bank at the time the levy was served. This provision is considered declarative of present law.

Section 6332. Surrender of property subject to levy

A new procedure by which the United States may levy upon a delinquent taxpayer's life insurance or endowment policies is provided in a new section 6332(b). The new procedure authorizes the Secretary or his delegate to levy on an insurance company to secure the cash loan value of the taxpayer's insurance policy, as of the 90th day after the levy is made. The levy may be made without surrendering the contract document, and it constitutes the exercise of the taxpayer's right to an advance under the insurance contract. The levy must include a certification that a copy of the notice of levy has been mailed to the delinquent taxpayer. An insurance company may satisfy a levy by paying over the amount to which the taxpayer with respect to whom the levy was made. Since a suit to enforce a the notice of levy. This amount will be increased by any advance (including interest thereon) made to the taxpayer after the date the company had actual notice of the tax lien other than an automatic premium loan (including interest thereon) made pursuant to an agreement entered into by the company and the taxpayer before the company had such notice. In some circumstances it may still be necessary for the United States to bring an action to foreclose its tax lien on an insurance policy or to enforce the lien in some other civil action. The new subsection specifically provides that the satisfaction of a levy by an insurance company will be without prejudice to any such proceeding.

Present section 6332 provides that the Secretary or his delegate may collect a "penalty" equal to the amount of money which a debtor of the taxpayer should have turned over to the district director in response to a levy. Designation of this amount as a "penalty" has caused some confusion. Doubt has existed as to whether the amount so collected should be credited against the tax liability of the taxpayer with respect to whom the levy was made. Since a suit to enforce a levy is basically a means of collecting the underlying tax liability, there has been general agreement that amounts so collected should be credited against the taxpayer's tax liability and the Internal Revenue Service has usually followed that practice. Nonetheless, to avoid any confusion on the point in the future, all references to "penalty" in this enforcement provision have been dropped.

However, a specific penalty of 50 percent of the amount recoverable under the above provision would be added to the law and would apply to any person who fails or refuses to surrender property pursuant to a levy without just cause. This amount would not be credited against the tax liability of the taxpayer with respect to whom the levy was made. Any bona fide dispute over the amount owing to the taxpayer or over the legal effectiveness of the levy itself will constitute a just cause for refusing to honor the levy and will relieve the taxpayer of the penalty. The Internal Revenue Service has on occasion been forced, however, to sue a debtor of a taxpayer repeatedly in order to collect successive amounts owing to the taxpayer. The first such refusal to honor a levy may well have been founded upon "just cause." Nonetheless, the successive refusals after determinations by a court that the amount should be paid over to the United States were a form of harassment which cannot be justified. Such actions would in the future result in an additional 50 percent penalty on the reluctant debtor.

Finally, a new subsection (d) would be added to section 6332 to specify that any person who surrenders to the United States pursuant to a levy property belonging to a taxpayer would be relieved of any liability to the taxpayer for having honored the levy. This will not, of course, relieve the debtor of liability to a third party whose property is mistakenly handed over to the United States. The debtor is charged with knowledge of the ownership of the property which he holds. In addition, an insurance company which satisfies a levy under the new procedure will be discharged from any obligation or liability to a beneficiary of the policy with respect to which the levy was made.

Section 6337. Redemption of property

Section 6337 provides rules by which a delinquent taxpayer may redeem property seized by the United States for nonpayment of taxes. At present, the owners of any real property sold at a Federal tax sale are entitled to redeem such property at any time for a period of 1 year following the sale. The 1-year period would be reduced by the bill to 120 days. A similar change has been made in title II of the bill with respect to the right of the United States to redeem property on which it has a tax lien following a foreclosure sale of that property by a creditor superior to the United States. See bill section 201 which amends section 2410(c) of title 28 of the United States Code. A right of redemption

constitutes a cloud on the title of a purchaser at any such sale. It may well depress the price which purchasers are willing to pay at such sales and thereby reduce the amount which may ultimately be recovered by the United States and other creditors. Some period of time for redemption by the United States, or the taxpayer in the case of a sale by the United States, is necessary in order to guard against sales at unreasonably low prices. It is believed that the 120-day period provided in the proposed legislation is ample to protect the rights of all parties and will avoid needlessly depressing the price that can be obtained at such a sale.

Section 6343. Authority to release levy and return property

Present section 6343 authorizes the Secretary or his delegate to release a levy. This section would be amended to add a provision authorizing the Secretary or his delegate to return to its rightful owner any property which has been wrongfully levied upon. The provision would allow return of the amount of any money received pursuant to a levy, specific property seized, or an amount of money equal to that received from a sale of seized property. The specific property could be returned at any time prior to its sale by the district director. Money could be returned by the district director only within 9 months of the date of the levy. It is important that third parties who claim an interest in any property seized by the United States take prompt action to recover their property. If the district director seizes property under the belief that it belongs to a particular taxpayer, he will frequently end collection efforts against the taxpayer on the assumption that he has collected the tax. If action is to be taken promptly against the taxpayer, it is essential that the district director be advised promptly that the property seized does not belong to the taxpayer.

In addition to the above changes, various minor amendments have been made by section 104 of the bill. For example, section 6335 has been amended to relax somewhat the requirements for publication of notice of a sale of delinquent taxpayers' property. Present law requires that notice be published in a newspaper published within the county where the seizure takes place. This has been expanded to allow publication in any newspaper generally circulated in such county. Section 6338(c) has been amended to simplify the method for preparation of deeds to property purchased by the United States at a tax lien sale. The amendment drops from the law a requirement that the deed be prepared by the U.S. attorney. Section 6339 would be amended by adding a new subsection (c) which specifies that a sale of property to satisfy a Federal tax lien will cut off all mortgage, liens, and encumbrances on the property which are junior to the lien of the United States. This provision is declarative of present law.

Section 105. Collection of withheld taxes

This section of the bill adds two new sections to chapter 25 of the Internal Revenue Code, which deals with liability for employment taxes. New section 3505 would impose personal liability for employment taxes where a lender or surety pays wages directly to employees or advances funds to an employer for the payment of wages with actual knowledge that the employer does not intend or will not be able to pay the withholding taxes relating to such wages. Section 3506 provides that where taxes to be withheld on wages paid to an employee for services performed in the construction of real property, where the contract price exceeds $2,000 (other than a single family, owner-occupied dwelling), are not paid, the United States shall have the same rights (including liens), remedies, and priorities against any person or property to collect such unpaid wages as are provided by any law for the collection of such wages by such employee.

As a preliminary matter it should be understood that the courts have uniformly held that a promise of a surety to guarantee the payment of "wages" does not constitute a promise to guarantee payment of the withholding taxes attributable to those wages. *U.S.* v. *Crossland Construction Co.* (4th Cir. 1955) 217 F. 2d 275. Thus, payment of the withholding taxes are almost never guaranteed by a surety bond. Even bonds issued under the Miller Act in connection with Government contracts do not guarantee the payment of Federal withholding taxes. This latter problem would be corrected by the amendment to the Miller Act in section 105 of this bill.

Section 3505. Liability of third parties paying or providing wages

Section 3505 is intended to assure that a lender, surety, or other person who assumes responsibility for completion of a construction contract or a contract for the production of goods, such as articles of clothing, will also assume responsibility for the employment taxes subsequently incurred in connection with the job. If any person pays wages directly to the employees, subsection (a) will require withholding of the proper employment taxes. Subsection (b) is aimed at a device that has been the subject of some litigation in recent years. When a prime contractor or surety is forced to complete a contract for an insolvent contractor or subcontractor, the necessary funds are routed though the insolvent contractor, frequently by means of a joint bank account. The person advancing the funds avoids the withholding tax responsibilities of an employer. Only an amount equal to the payroll net of withholding taxes is advanced. The insolvent contractor has no assets out of which the employment taxes can ever be collected. Nonetheless, since the employees were paid only the amount of their wages less withholding taxes, they are entitled to claim credit for the "withheld" taxes on their returns. By this means withholding tax liabilities can be incurred for a substantial period of time with no practical possibility for collection of the tax. See, for example, *Westover* v. *Simpson Construction Co.* (9th Cir. 1954) 209 F. 2d 908; *Phinney* v. *Southern Warehouse Corp.* (5th Cir. 1954) 212 F. 2d 448.

In order for subsection (b) of section 3505 to apply, the funds must be advanced for the purpose of paying wages and the person advancing the funds must have actual notice or knowledge that the employer does not intend or will not be able to make timely payments of the employment taxes. Subsection (b) is intended to apply only in the case of devices designed to avoid the tax. It is not intended to apply to an ordinary loan of working capital to a businessman by a bank and will not impose upon lenders a general obligation to determine the purpose of every loan or the ability of the borrower to pay subsequent withholding taxes. Subsection (b) limits the potential liability of the surety, lender, or other person to 20 percent of the amount so advanced, approximately the total withholding taxes which could arise from the amount loaned.

Section 3506. Liens for withheld taxes

Section 3506 provides that where a contractor fails to withhold and pay over trust fund taxes on the wages of his employees, where those wages are paid for services performed in the improvement of real property (other than a single family, owner-occupied dwelling) pursuant to a contract exceeding $2,000, the United States shall have the same rights (including liens), remedies, and priorities against any person or property to collect such unpaid taxes as are provided by any law for the collection of such wages by such employee.

Section 3506 would give the United States the same rights with respect to the collection of the unpaid trust fund taxes as the employee of a contractor, to whose wages the taxes apply, would have if his wages were not paid. All 50 States have mechanics' lien laws which, in different degrees and through different procedures, impose a liability for unpaid wages of construction workers upon the owner of real property to whose property the wages are attributable. Generally speaking, the United States must perfect its rights, with respect to each quarterly period for which a reurn of withheld taxes was required, by taking the same actions which are required by law of an employee for the collection of his wages. Thus, if under State law an employee must perfect his right against an owner of real property for his unpaid wages by filing a notice with the local registrar of deeds, the United States must file a separate notice of its claim for unpaid withholding taxes for each quarterly return period with the local registrar of deeds.

Where the United States takes all the actions required by law of an employee for the collection of his wages against any person or property, its actions shall be timely for all purposes, and the rights of the United States shall have the same priority against other interests as the rights of the employee would have if the employee had taken the same actions on the first day he could take such actions. Under some State laws the priority of an employee's claim for wages relates back to the time the services to which the wages are attributable were performed, and the claim of the United States, if properly asserted in the manner provided under State law, also would relate back in such an instance to the time the services to which the taxes were attributable were performed.

The section contains rules to deal with State requirements which too drastically extend or curtail the period available to an employee to perfect his rights. It provides that, with respect to amounts attributable to any particular calendar quarter, the United States has the same period of time after the date when a return for that calendar quarter was due to meet any requirement of State law as the employee has to meet that requirement except that such period shall not be less than 30 days after the date the return for the calendar quarter was required to be filed, or 30 days after the date on which a return for the quarter was filed, if that period expires later. However, the period of time allowed to the United States, with respect to the first requirement of law to be satisfied, shall not exceed 6 months from the date when a return for a calendar quarter was required to be filed. Thus, even if no return is filed, the United States shall have no more than 6 months after the time the return should have been filed to assert its claim under this provision, no matter how much longer the period is that State law provides.

If a document required by law may not be filed by the United States in the office designated by State law for the filing of such document by an employee, the required certificate or notice shall be effective if it is filed in the office of the clerk of the U.S. district court in which the State recording office is located.

Subsection (c) of proposed section 3506 provides that if the person subject to a liability under section 3506 pays withholding taxes he will be relieved of liability to the contractor to the extent of such payments. Thus, for example, the property owner may pay over the withheld portion of the contract price to the United States in satisfaction of the withholding tax liability. To the extent of such payment, the property owner will be treated as having paid the general contractor.

Section 3506(d) provides that a district director may enter into an agreement to extend or waive any time limitation required by law to perfect its rights under the section. Thus, if a property owner were willing to grant a district director an extension of time in which to enforce the Government's rights, the district director would have an extended period to collect the unpaid taxes from the employer who was delinquent in withholding and paying over the taxes. The authority to enter into such agreements will avoid unnecessary enforcement actions against property owners.

Miller Act amendment

Finally, section 105 amends the Miller Act (40 U.S.C. 270a) to require that performance bonds on Federal construction jobs specifically insure payment of the employment taxes incurred in that job. At present the surety bonds written on Federal construction jobs normally do not insure against nonpayment of the Government's own taxes.

SECTION 106. SUSPENSION OF THE RUNNING OF THE PERIOD OF LIMITATION

This section of the proposed legislation makes minor changes in provisions of the Internal Revenue Code relating to suspension of the period of limitations, in part to solve technical problems that have arisen under present law and in part to conform the limitation provisions to the changes made elsewhere by the proposed legislation.

Section 6503. Suspension of running of period of limitation

Subsection (a) of section 106 of the bill would amend section 6503(b) to suspend the statute of limitations on collection of taxes during the period when the assets of a taxpayer are subject to the control or custody of a court on behalf of the estate of a deceased or incompetent taxpayer. The law is clear that no administrative collection actions can be taken against assets which are in the custody of any court. The Internal Revenue Code presently provides for suspension of the running of the period of limitations in all other circumstances in which the assets are subject to the custody of a court.

Present section 6503(c) provides that the period of limitations on collection after assessment will be suspended during the period that collection is hindered or delayed because property of the taxpayer is held outside the United States. Proof that collection has been hindered or delayed is difficult. Furthermore, any suspension of the period of limitation should be for a specific and readily ascertainable period of time. The terms of section 6503(c) would, therefore, be altered by the bill to provide that the period of limitations on collection be suspended for the period during which the taxpayer himself is outside the United States and for 6 months after his return.

Section 104(i) of the bill amended section 6343 to grant to the Secretary or his delegate authority to return property wrongfully seized to its rightful owner. Section 110 of the bill adds a new section 7426 to the Internal Revenue Code allowing a third party to sue for return of property or money wrongfully levied upon. During the period when property of a third party is held by the district director, the district director will frequently suspend efforts to collect the tax from the taxpayer in the belief that the seized property will satisfy the tax liability. A new subsection (f) has been added to section 6503 which will suspend the period of limitations on collection after assessment for a period from the date of wrongful seizure of property of a third party until the date such property is returned or a judgment secured pursuant to new section 7426 is satisfied, and for 6 months thereafter. This suspension of the statute of limitations will apply only to tax liability equal to the amount of money or the value of the property of the third party.

SECTION 107. PROCEEDINGS WHERE UNITED STATES HAS TITLE TO PROPERTY

Section 7402. Jurisdiction of district courts

Under section 6335(e)(1) of the Internal Revenue Code, when the United States holds a sale of property to foreclose its tax lien, a minimum bid figure is fixed in advance by the revenue officer holding the sale. If the bids are not equal to the minimum bid price, the officer will declare the property purchased by the United States. In such cases, and under certain other circumstances, the United States takes actual title to property pursuant to the enforcement of a tax lien. The United States does not at present have any express authority to bring a quiet title action to establish by court decree its rights in such property. Therefore, section 7402 of the Internal Revenue Code would be amended to add a new subsection (e) which will give the U.S. district courts jurisdiction over any action brought to quiet title to property if the United States alleges that it has title to such property as a result of the enforcement of a tax lien.

Section 7403. Action to enforce lien

Present section 2410 of the title 28 allows an officer of the United States to bid at a sale pursuant to a foreclosure action brought by a senior lien holder. The bid is limited to the amount of the lien of the United States. Thus, no cash payment by the United States is ever required in such cases. Section 107 of the bill amends section 7403(c) to allow the United States to bid at a sale ordered in an action brought by the United States in a Federal district court to foreclose its tax lien. As in the case of section 2410 of title 28, the bidding is limited to the amount of the tax lien.

SECTION 108. INTERVENTION BY UNITED STATES

Section 7424. Intervention

Section 108 of the bill repeals the present section 7424 whch provides a rarely used method of bringing suit against the United States to quiet title to property in which the United States claims a lien or interest. In its place a new section 7424 would be added to the code which would specifically grant to the United States the right to intervene in any civil action to assert a Federal tax lien against any property which is the subject of any such action. The new section provides that the civil action or suit shall have no effect upon the Federal tax lien or the interest of the United States if intervention is denied.

SECTION 109. DISCHARGE OF LIENS HELD BY UNITED STATES

Section 7425. Discharge of liens held by United States

Under many State statutes, junior liens may be extinguished without the lienor being joined in a foreclosure action. In some States, property subject to a mortgage or a deed of trust may be sold by the trustee without any judicial action and junior liens will be cut off by the sale. The Supreme Court has ruled that a Federal tax lien may, if State law so provides, be extinguished by such judicial or nonjudicial sales (*U.S.* v. *Brosnan* (1960) 363 U.S. 237). As a result, tax liens are sometimes extinguished without the United States having actual notice of the foreclosure action or nonjudicial sale. Under these circumstances, it is not possible for the Internal Revenue Service to take the necessary steps to protect the interests of the United States in the collection of its tax revenues.

Section 109 of the bill adds a new section 7425 to the Internal Revenue Code. Subsection (a) of that section provides that a lien of the United States may not be extinguished by a judicial foreclosure unless the United States is joined, if notice of the lien of the United States is on file on the date the foreclosure action is commenced. Thus, a litigant need only check the record for Federal tax liens on the date of commencement of the action.

Subsection (b) of section 7425 provides that an interest of the United States in property may not be affected by a nonjudicial sale if notice of the lien was on file 30 days prior to such sale unless the district director is given notice of such sale by registered or certified mail not less than 25 days prior to the sale. Such notice must advise the district director of the time, place, and terms of the sale and certain other information concerning the taxpayer and the tax lien. This provision will assure that the district director will have ample opportunity to protect the interests of the United States.

The United States would be entitled to redeem real property from a nonjudicial sale for a period of 120 days following the sale. This is the same period of time allowed for redemptions by the United States (under the amendments to 28 U.S.C. 2410) from judicial sales.

SECTION 110. PROCEEDINGS BY THIRD PARTIES AGAINST THE UNITED STATES

Section 7426. Civil actions by persons other than taxpayers

Under present law if a district director seizes property for the payment of taxes of a taxpayer and a third party claims an interest in such property (as owner, mortgagee, etc.), the courts frequently allow the third party to sue the district director to recover the property. In these cases though the judgment is technically against the district director, that officer is defended by the Department of Justice and is held harmless against the judgment by the United States.

New section 7426 of the Internal Revenue Code, added by section 110 of the bill, would codify for the first time specific rules under which a third party could sue the United States directly to recover property or money wrongfully seized by a district director. The remedy provided by new section 7426 will be the exclusive means of redress for actions which may be brought under this section. Any action which cannot be brought under this section may still be brought against the district director under the rules applicable in the past.

In general, new section 7426 will allow a civil action to be brought against the United States in a Federal district court if (1) a levy has been made on the property and the plaintiff can show that the levy would irreparably injure his interest in the property, or (2) if the property has been sold and the interest of the third party has been transferred to the proceeds of the sale by agreement or applicable local law. An action can be brought under this provision immediately after a levy has been made and before the property has actually been surrendered to the Government. For example, this provision would, in appropriate circumstances, permit an action for an injunction against the Government's enforcing its levy.

Subsection (b) of new section 7426 limits the kinds of relief that the district courts may grant under this section. As indicated, the court may grant injunctions against enforcement of a levy or sale of property. The court may order return of specific property held by the United States or may grant a money judgment for the amount of cash levied upon or the proceeds of the sale of seized property. If the property has been sold for an amount in excess of the Government's tax lien, an action may be brought under this section to recover the excess proceeds of the sale. Finally, specific provision is made for allowing the United States to enter into an agreement with the various persons claiming an interest in property for the sale of the property and the transfer of those interests to the proceeds of the sale. An action could be brought under new section 7426 to recover all or part of the proceeds of such a sale.

In order to avoid a period of confusion in litigation after passage of this bill and before practicing attorneys have become fully familiar with its terms, section 7426(e) grants authority to the district courts to amend pleadings to conform to the new rules. Thus, if, after the passage of this bill, an action is brought against a district director under the former rules applicable to such actions, the pleadings may be amended to substitute the United States as defendant.

Section 110(b) of the bill amends section 6532, relating to periods of limitation, to provide that the statute of limitations on actions under section 7426 will expire 9 months after the date of the levy giving rise to such action. Since

after seizure of property for nonpayment of taxes a district director is likely to suspend further collection activities against the taxpayer, it is essential that he be advised promptly if he has seized property which does not belong to the taxpayer. It is appropriate that the owner of property be required to take steps within a reasonable period of time to protect his interest.

Subsection (c) of section 110 of the bill amends section 7421(a) of the code. That section presently prohibits injunctions against the assessment or collection of tax. The cases decided under this provision raise a question as to whether this prohibition applies against actions by persons other than the taxpayer. New section 7426 will specifically allow actions by third parties to enjoin the enforcement of a levy or sale of property. The amendment to section 7421 makes clear that third parties may bring injunction suits only under the circumstances provided in new section 7426(b)(1) of the code.

SECTION 111. SALE OF PROPERTY ACQUIRED BY UNITED STATES

This section of the bill makes minor technical amendments to the provisions of the Internal Revenue Code providing authority to the Secretary or his delegate to sell property. The purpose of the amendments is to extend those sections to cover all property acquired by the United States without regard to the means by which the property is acquired. For example, these sections would be expanded to apply to property redeemed by the United States.

SECTION 112. FUND FOR REDEMPTION OF REAL PROPERTY BY THE UNITED STATES

Under present law the United States is entitled to redeem real property which is sold at a foreclosure sale by someone having an interest superior to the United States. The purpose of that provision is to allow the United States to redeem property when property is sold at a price substantially less than its fair market value. It is contemplated that the property will be resold by the United States at a more realistic price and that the "profit" on the sale can be used to satisfy a part of the taxpayer's tax liability.

Though this provision has been in the law for many years, no funds have ever been provided to the Secretary of the Treasury for use in redeeming property. A question has been raised as to the propriety of using the general appropriations of the Treasury for this purpose. This bill would, therefore, establish a revolving fund of $1 million for the redemption of real property as permitted by section 7425 of the code and section 2410 of title 28. The fund will be reimbursed out of the proceeds of subsequent sales of the property redeemed. Any surplus proceeds will be deposited in the Treasury.

SECTION 113. EFFECTIVE DATE

In general, title I of the bill, which covers all amendments to the Internal Revenue Code, will apply after the date of enactment. Exceptions to that rule are provided to assure that passage of this statute will not impair any rights which are in existence prior to its passage or disturb the judgments in any cases which have become final prior to its passage.

TITLE II. CONSENT OF UNITED STATES TO BE SUED IN ACTIONS AFFECTING PROPERTY IN WHICH IT HAS A LIEN OR INTEREST

Title II of the bill makes various technical amendments to title 28 of the United States Code, relating to judiciary and judicial procedure. In general, the purpose of these amendments is to cure certain technical defects in present title 28 and to simplify in certain circumstances the procedures for litigating with the United States concerning title to property.

SECTION 201. JOINDER OF UNITED STATES IN CERTAIN PROCEEDINGS

Title 28, United States Code, section 2410

In section 2410 of title 28 of the United States Code, the United States has consented to be sued in an action brought in any district court or any State court to quiet title to property or to foreclosure a mortgage on property. The United

States has not consented to be sued in actions to partition or to condemn property or to be sued in an action in interpleader. Private litigants frequently join the United States in such actions. The United States is forced to move to dismiss the action and then to move to intervene in the action. The bill would avoid these needless procedural steps in the future by adding to section 2410 of title 28 a waiver of sovereign immunity in connection with actions to partition or condemn property and actions in interpleader.

Section 2410 would also be amended to require that the complaint in any such action involving a Federal tax lien set forth certain information concerning the lien and the time and place of filing. This will enable the United States to respond to the complaint more promptly.

Subsection (c) of section 2410 has been amended to specify that an action to foreclose a mortgage under section 2410 must seek a judicial sale of the property. This will prevent a court from merely decreeing that the lien or other interest of the United States is junior to the lien being foreclosed and is, therefore, "cut off." In such cases it will be necessary for the property to be sold so that the United States may claim any proceeds of the sale in excess of the liens and interests which are superior to the interest of the United States.

Section 2410(c) of title 28 is also amended to reduce the period for redemption of real property provided by that section from 1 year to 120 days. This change applies only if the interest of the United States in the property is a tax lien. An identical period is provided in new section 7425 (sec. 109 of this bill) for redemptions from nonjudicial sales.

Finally, a new subsection (d) is added to section 2410 prescribing the amount that shall be paid by the United States in order to redeem property from a purchaser at a foreclosure sale. The courts presently determine this amount by reference to State law, although the law of some States does not prescribe this amount. The new subsection provides a formula of uniform application in all jurisdictions.

SECTION 202. JURISDICTION AND VENUE IN CERTAIN CASES AGAINST THE UNITED STATES

This section makes the necessary technical amendments to title 28 to provide jurisdictional and venue rules for actions under the new section 7426 (relating to civil actions by persons other than taxpayers).

SECTION 203. TIME FOR REMOVAL OF ACTIONS AGAINST THE UNITED STATES FROM STATE COURTS

This section amends section 1446(b) of title 28 to permit the United States to move for removal of an action from a State court within 60 days after receipt by the United States of any paper from which it may be ascertained that an issue concerning rights of the United States is involved. Under present law such a motion must be made within 30 days after receipt of the first pleading by the United States. This has caused some practical problems in the past because it may not be clear from the original pleadings in a lawsuit that any interest of the United States is involved.

SECTION 204. EFFECTIVE DATE FOR TITLE II

In general, title II, like title I, would apply after the date of enactment. The new rules relating to removal of actions from State courts would apply only to cases in which the first document raising an issue concerning rights of the United States is received by the United States after enactment of the bill.

The CHAIRMAN. Our first witness will be our friend of many years, Mr. Laurens Williams, chairman of the Special Committee on Federal Liens of the American Bar Association.

STATEMENT OF LAURENS WILLIAMS, CHAIRMAN, SPECIAL COMMITTEE ON FEDERAL LIENS, AMERICAN BAR ASSOCIATION; ACCOMPANIED BY JOHN J. CREEDON, ASSOCIATE GENERAL COUNSEL, METROPOLITAN LIFE INSURANCE CO., NEW YORK CITY; ROBERT H. ELLIOTT, CAPLIN & DRYSDALE, WASHINGTON, D.C.; ALEXANDER M. HERON, POPE, BALLARD & LOOS, WASHINGTON, D.C.; KENNETH H. JOHNSON, VICE PRESIDENT AND GENERAL COUNSEL, BANK OF AMERICA, SAN FRANCISCO, CALIF.; AND WILLIAM T. PLUMB, JR., HOGAN & HARTSON, WASHINGTON, D.C., MEMBERS, SPECIAL COMMITTEE ON FEDERAL LIENS, AMERICAN BAR ASSOCIATION

The CHAIRMAN. Mr. Williams, we are pleased to have you with us today to discuss this subject.

If you will, please, identify those at the witness table with you.

Mr. WILLIAMS. Thank you, Mr. Chairman, and members of the committee.

I am Laurens Williams, of the law firm of Sutherland, Asbill & Brennan, of Washington, D.C., and Atlanta, Ga. I appear on behalf of the American Bar Association, which has a total membership of over 120,000 American lawyers, as chairman of its special committee on Federal liens.

With me are five members of that committee:

John J. Creedon, associate general counsel, Metropolitan Life Insurance Co., New York City; Robert H. Elliott, of the law firm of Caplin & Drysdale, Washington, D.C.; Alexander M. Heron, of the law firm of Pope, Ballard & Loos, Washington, D.C.; Kenneth H. Johnson, vice president and general counsel, Bank of America, San Francisco, Calif.; and William T. Plumb, Jr., of the law firm of Hogan and Hartson, Washington, D.C.

I may say Mr. Plumb is in large part the draftsman of the work before you.

In general, my testimony will also reflect the views and recommendations of a substantial number of other industry organizations, as will appear in greater detail later in my testimony.

The bills which you are now considering reflect a general recognition, on the part of both Government and business, that present Federal tax lien law is both badly out of joint and archaic, and in urgent need of reform and modernization. No one would suggest that the Republic will fall if you do not forthwith enact these bills or their equivalent in purpose and effect. Nor do we represent to you that these bills burst with political sex appeal to a vast multitude of voters.

But we do earnestly submit to you our considered, professional judgment that the current law of Federal tax liens causes gross inequities, is permeated with serious uncertainties which significantly impede normal business transactions, and that these bills would provide constructive solutions to most of the inequities and uncertainties which presently exist.

Let me start with a brief explanation of current law. Section 6321 of the Internal Revenue Code creates a lien in favor of the Government "upon all property and rights to property, whether real or

personal, belonging to" every taxpayer against whom a Federal tax assessment is made.

This lien arises automatically as of the moment a tax is assessed, whether or not notice of the lien is subsequently filed of public record. The act of assessment which creates the lien is an administrative act—an internal procedure of the Internal Revenue Service, which is not open to public inspection, of which there is no public notice, which, indeed, the Internal Revenue Service is forbidden, under criminal penalties, to disclose.

Now, this general Federal tax lien is an important, valuable instrument for the collection of taxes and, so long as it is truly confined to property and rights to property belonging to a taxpayer, no one would want to cripple it.

The trouble is that under present law the Federal tax lien is not truly confined to property and rights to property belonging to a delinquent taxpayer—it often encroaches on property or rights to property belonging to third parties, by preempting—taking priority over—in effect, confiscating the interest of other parties in the taxpayer's property.

It does so largely because, in a series of decisions beginning in 1950, the Supreme Court of the United States developed a legal doctrine (called the "choateness" doctrine) which substantially extended the scope of the Federal tax lien, and which has the practical effect of preempting the rights and interests of third parties in a taxpayer's property and applying them to satisfy Federal tax liabilities which had not even arisen when the third parties acquired their lien rights and security interests in the taxpayer's property.

It is this "choateness" doctrine which has had such a severe impact on innumerable business and commercial transactions, and which has created increasing concern and uncertainties as to the extent to which third persons who have interests in property of a taxpayer are secure as against both existing but unrecorded Federal tax liens and later-arising Federal tax liens.

Let me spell this out, step by step, so you may see why, the state of the law being as it is, this legislation is needed.

As we have seen, as of the moment a tax is assessed a Federal tax lien automatically attaches to "all property and rights to property * * * belonging to" a delinquent taxpayer—whether or not notiee of the lien is subsequently filed of public record.

The question of what "property and rights to property * * * belong(ing) to" the taxpayer is (and we think must be) determined by State property law.

But where there are two or more liens against a taxpayer's property, and one of them is a Federal tax lien, priority between the Federal tax lien and other liens against the taxpayer's property, that is, the question of which lien outranks the other, is a Federal question, not a question of State property law.

Lien priorities are, of course, very important—if the aggregate of the liens on a particular piece of property exceeds the value of the property, someone is going to lose out, and that someone is the holder of the most junior, subordinate lien, that is, the lienholder who has the lowest priority.

Under Federal law, the controlling principle in determining lien priorities is simply that whichever lien is "first in time is the first in right," and it is in the application of this principle—in determining which lien was "first in time"—that the Supreme Court's "choateness" doctrine interjects itself, creating the major present inequities and uncertainties.

As we shall see, the practical effect of the choateness" doctrine is to virtually nullify the controlling Federal principle of lien priorities that whichever lien is "first in time is the first in right."

The "choateness" doctrine is that the time as of which a competing lien acquires priority vis-a-vis a Federal tax lien is not the time when it has become a valid, effective, and perfected lien under State law; rather, it is the time as of which the competing lien has become "choate" in the Federal sense—that is, perfected in the Federal sense—and the Supreme Court has fashioned a very rigid set of special rules of what is required before a lien competing with a Federal tax lien is to be deemed "choate."

No matter how completely valid and perfected a competing lien may be under State law, if the specific property to which the competing lien attaches is not completely and finally certain, or if it is subject to change, the competing lien is deemed "inchoate," even though the lien creditor perfected his lien under State law and made a loan or gave other consideration for his lien before the tax lien arose.

That is to say, to be "choate" in the Federal sense, under the Supreme Court ruling, the competing lien must have attached with certainty and finality to specifically identified property.

Furthermore, so long as the amount of the competing lien is not finally fixed, beyond possibility of change or dispute, it is considered to be "inchoate." In contradistinction, the Federal tax lien does not have to meet any of these tests.

It is deemed "choate"—a perfected lien on all property and rights to property belonging to the taxpayer—and therefore entitled to priority, as of the time of assessment, notwithstanding that at that time there has been no specification or identification of the property to which it attaches, the amount of the deficiency in tax may not have been finally determined, and there is no way anyone other than the delinquent taxpayer can learn of its existence—it truly is a "secret" lien. That is, until and unless recorded.

Now, these fine-spun, legalistic theories may seem remote from everyday life. But they have very real and very harsh, inequitable, results. Applying them, the Supreme Court has held that the lien of a workman or a material man for labor performed on or materials furnished for the taxpayer's property, who has completed his work and has duly taken all steps under State law to perfect his lien on the property, is "inchoate" and thus junior (subordinate) to a Federal tax lien that is assessed at any later time before the workman or material man obtains a final judgment in a foreclosure action which precisely and finally fixes the exact amount due him (without regard to the fact that the amount due may never have been in dispute).

Similarly where, long before any Federal tax lien arose, property rights of a taxpayer were duly and completely assigned to a surety to indemnify the surety against loss on a payment or performance bond it was agreeing to sign, all in full compliance with the State

law, a Federal tax lien arising long afterward was accorded priority on the grounds that the surety's lien was "inchoate" because the surety's liability, although completely incurred and utterly inescapable, had not become finally fixed and definite in amount at the time the Federal tax lien came into existence.

Another example: The typical real estate mortgage provides that if the mortgagor fails to pay property taxes, keep the mortgaged property insured and in repair, and so forth, the mortgagee may protect its interest in the property by paying the taxes or insurance premiums, repairing it, and so forth, and may add such amounts, along with the expenses of foreclosure, to the lien of the mortgage.

Under State law, such amounts have the same priority as the original principal of the mortgage debt and the interest thereon. But, applying the "choateness" doctrine, the Supreme Court has held that a prior mortgagee's rights to be reimbursed for such necessary outlays are "inchoate" until the amounts are paid, hence are subordinate to Federal tax liens assessed in the interim.

Lower courts have applied the "choateness" doctrine to many other situations. For example—and I don't need to belabor the inequity of this result, but I do call special attention to it—a couple who bought a home on contract, who entered into possession of the home and then made many installment payments thereon, but who had not yet paid enough to be entitled to receive a deed, have been deprived of both their home and their payments, in order to satisfy a Federal tax liability assessed, long after they bought the property and entered into possession of it, against the man from whom they bought it.

This is a literal application of the "choateness" principle I have described.

A lawyer who brings a suit for his client, expending substantial time and incurring substantial expense in reliance on his statutory attorney's lien on the cause of action, may be denied any part of the recovery if a Federal tax in a greater amount is assessed against the client at any time before a final judgment in the litigation is paid.

In the important area of business loans and commercial finance, the "choateness" doctrine creates impossible problems. Obviously, it often is necessary for a businessman to maintain a continual flow of loans in order to finance his inventories and his accounts receivable—such loans are commonplaces.

In these "revolving loan" situations, both the amount loaned and the property securing the loan are constantly changing, often daily, sometimes several times a day.

The Uniform Commercial Code, promulgated only a little over 10 years ago by the American Law Institute and the National Conference of Commissioners on Uniform State Laws, is already law in 42 of the States and the District of Columbia, and the Virgin Islands, and clearly within a very few years will be adopted by most, if not all, of the other States.

It recognizes the business necessity and the propriety of such inventory and accounts receivable financing arrangements, by protecting the secured lender against other liens which may arise between the time the lender enters into the financing arrangement and files a public notice thereof and the time when a particular advance is made.

The law of many—if not most—States had recognized the validity of such secured loans for several decades before the advent of the Uniform Commercial Code. Quite understandably under the "choateness" doctrine, the Government takes the position that such security interests are "inchoate" as against a Federal tax lien filed at any time before a particular advance is made.

Thus, to be fully protected, a commercial lender must make searches for Federal tax liens before each advance is made, perhaps every day.

When these are made daily, or perhaps on a several-times-a-day basis, it becomes an impossible problem.

One of the major objectives of the bills before you is the reform of the "choateness" doctrine, to eliminate or minimize the inequities and the impediments to business transactions which it creates.

Initially, when the Supreme Court first enunciated the "choateness" doctrine, and in a series of decisions began to spell out the strict rules for its application, there was strong sentiment in the business and legal community for total abolition of the "choateness" rule and for adoption of the principle that the priority of a Federal tax lien should be determined by State law, just as if the Government were a private creditor.

I may add, gentlemen, that if you will trace the history of the current section of the code creating this lien and look back, from my memory, to 1913, you will find a discussion, I believe on the floor of the Senate, in which the committee reporting the bill was saying the Government under this lien ought to be treated just like any private creditor. It ought to have rights similar to that of a private creditor.

It was in this direction that there was very strong sentiment for going to try to remedy the problem.

But when the American Bar Association analyzed the problem, it recognized that the Federal Government is not in fact like a private creditor, and that the considerations which influence the States to establish certain rules of priority as between private lienors are not necessarily pertinent where the Federal Government is involved.

Unlike most private creditors, the Federal Government may be said to be an "involuntary" creditor—unlike most other creditors, it cannot select its customers or decide in advance, customer by customer, whether or not it will extend credit; indeed, it has no means of refusing credit to anyone.

Accordingly, the American Bar Association concluded that blanket adoption of State priority rules should not be recommended, but that each of the specific situations which commonly arise should be examined to determine what specific relief equitably could be granted, and what accommodations and restrictions on such relief are necessary to prevent impairment of legitimate tax collection processes.

Four sections of the American Bar Association, concerned respectively with real property law, tax law, banking and business law, and insurance law, were independently studying the problem of Federal tax lien priorities as long ago as a dozen years.

In 1958, the house of delegates consolidated those efforts in a special committee of the association. In developing its recommendations, that special committee, of which I was, and am chairman, worked closely with Government representatives on an informal basis, in order to ascertain their problems and to work out accommodations to the

proper needs of the Internal Revenue Service and those of private citizens.

The resulting legislative proposals of the special committee were unanimously approved by the house of delegates of the association in February 1959—and before you, you have a copy of that original report to the house of delegates—and shortly thereafter were introduced in Congress, for purposes of study, by Chairman Mills and the late Representative Simpson, and have been reintroduced in each subsequent session by the chairman and ranking minority member of this committee.

(Text of the "Final Report of the Committee on Federal Liens of the American Bar Association," approved February 23, 1959, appears on p. 75.)

Mr. WILLIAMS. In the ensuing years, the Treasury Department made intensive studies of the proposals, and produced a draft bill which embodied many, although not all, of the reforms sought by the American Bar Association.

About 3 years ago a group was organized with representatives of the association and numerous industry and business groups whose interests are adversely affected by present law. An effort was made to include in this group, which became known as the task force on Federal liens, all organizations with an interest in the subject. Literally scores of meetings were attended by members of the task force and representatives of the Internal Revenue Service, the Treasury and Justice Departments, and the staff of the Joint Committee on Internal Revenue Taxation.

With a rare degree of cooperation and understanding of each other's problems, the present bills were hammered out. Some of the organizations represented on the task force have suggested to the committee, or to the staff, certain further relatively minor revisions or clarifications, or will do so in conjunction with these hearings. But while there may still be some disagreement on details, I believe that, on the whole, the bills are acceptable to all concerned on both sides of the table.

There is an exception to that statement. The primary exception to that general satisfaction relates to the provisions of section 105(a) of H.R. 11256—which I believe is not found in H.R. 11290—concerning withholding taxes referred to in the committee's February 11 press release, which would add two new sections.

I note there is an error at this point in the statement due to a misunderstanding of precisely what was meant by the press release. The portion to which there was strong objection was what would become section 3506.

In addition, there is objection to 3505 of the code. But I believe there is a difference not only in degree but in the nature of the opposition to the two provisions.

Section 3506, as we understand it, is not the subject of this hearing and not to be considered. We had misunderstood and do now understand that section 3505 is being considered.

I have been authorized to say that, with the deletion of those provisions—and I emphasize that because that was the impression of the parties involved at the time they authorized me to say what I am about to say—the organizations represented on the task force which are

listed on the sheet attached to this statement—16 national organizations—join the American Bar Association in endorsing the bills and in urging their approval by this committee.

I shall just touch the highlights of the amendments proposed in the bills:

A. SUBSTANTIVE PROVISIONS

1. Mechanics' lienors: Holders of mechanics' and materialmen's liens on real property or on the proceeds of a contract would be accorded priority over Federal tax liens filed after the date on which their liens arise under State law. However, such protection would begin no earlier than the time when the work or the supplying of material was actually commenced, even if State law establishes an earlier date.

2. Mortgages: The bills would extend the priority of a mortgage, not merely to the principal of the debt secured as under present law, but also to accruing interest thereon and the reimbursement of the mortgagee's outlays for insuring, preserving, and repairing the property; satisfying property taxes and other prior liens; and expenses of collecting and enforcing the debt.

3. Contract purchasers: The bills would extend to contract purchasers, optionees, and lessees the protection against unfiled and after-arising Federal tax liens which present law gives to purchasers with title.

However, they would enjoy such protection only if, under State law, their interests are so far perfected as to be valid against subsequent purchasers without actual notice.

4. Retail purchasers: Retail purchasers of tangible personal property in the ordinary course of the seller's business would be protected against Federal tax liens, if they act in good faith.

This would simply be a pragmatic recognition of the fact that a person who buys goods from a retailer cannot be expected, and should not be required to search public records for Federal tax liens before he buys. For the same reason, among others, possessory liens for the improvement, alteration, or repair of personal property would be protected against Federal tax liens.

5. Secured lenders; sureties: The provisions relating to the priority of secured commercial financing are of particular importance. Here, as on so many other points, the bills take a middle position, accommodating to the needs of both business and the Government.

Secured lenders would not be required, as at present, to search for Federal tax liens before every advance under an existing financing arrangement to protect themselves.

On the other hand, the bills would not permit lenders to continue indefinitely to make priority advances despite the intervention of a Federal tax lien (which, despite the intervention of other private liens, they may do under State law).

Instead, having once established their priority under State law by filing a financing statement when no Federal tax lien was on file, lenders would be allowed 45 days of grace in which to discover that a Federal tax lien had been filed, and would be protected with respect to loans made during that 45-day period in the absence of actual notice or knowledge of the Federal tax lien. Thus, a lender could

protect itself by search for Federal tax liens at the inception of the financing arrangement and at 45-day intervals thereafter.

The bills would also extend limited protection to certain advances made more than 45 days after notice of a Federal tax lien is filed, and to certain advances made after actual notice or knowledge of the lien.

The advances which would be so protected are (*a*) advances which a lender is required to make under an obligation running to someone other than the borrower, for example, a surety obligation; and (*b*) advances which, even though technically voluntary, are made to finance the completion of construction or other work on real property, or the raising or harvesting of crops or livestock.

However, to protect the revenue, the bills would place appropriate restrictions on the extent to which afteracquired property might be embraced in the priority of the security, where these special exceptions are relied upon.

In this connection, it is noteworthy that the bills no longer confine the protection of secured lenders, as does present law, to those who are "mortgagees" or "pledgees" in the conventional technical sense.

Many modern financing devices do not fit within the legal terms "mortgage" and "pledge," so the statutory language would be broadened to embrace any "security interest," which is defined in the bill to mean "any interest in property acquired by contract for an adequate and full consideration in money or money's worth for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability" (which clearly includes the traditional "mortgages" and "pledges" covered by present law).

It is made clear that the phrase "money or money's worth" embraces security given for a preexisting obligation, where the creditor gives the debtor more time to pay.

Now we come to something which I suggest to you is pretty complex, perhaps difficulty to understand, somewhat esoteric, but which does demonstrate rather graphically the bizarre results that flow from the "choateness" doctrine under current law.

6. "Circular priority," State and local taxes: A major problem for mortgagees under present law rises out of the so-called circular priority doctrine. State laws traditionally give later-arising real property taxes priority over preexisting liens and mortgages, on the theory that the tax is on the entire property, including all interests in it.

Thus, under State law, where there are two or more mortgages or liens, a subsequently arising State real property tax has priority over both other liens and where the aggregate of all liens exceeds the value of the property, the State property tax is satisfied at the expense of the most junior of the other liens.

The Supreme Court has refused to apply this State rule of priorities where the junior lien is a Federal tax lien, and in its stead has created and applied the so-called circular priority doctrine.

It is an almost incredible doctrine, which produces fantastic results. Let me illustrate it.

Suppose property is subject to the following liens:

Federal tax lien	$20,000
Mortgage—recorded before notice of the Federal tax lien was filed	10,000
Lien for property taxes—assessed after the Federal taxes, but which has priority over the mortgage under State law	2,000
Mechanic's lien—which under State law ranks behind the property tax lien, but ahead of the mortgage (because work was started before the mortgage was recorded)	8,000

Under present law, the relative priorities of these four liens are:

(*a*) The Federal tax lien is junior to the mortgage but has priority over the property tax lien and the mechanic's lien under the "choateness" doctrine.

(*b*) The mortgage is junior to the property tax lien and the mechanic's lien but has priority over the Federal tax lien.

(*c*) The property tax lien is junior to the Federal tax lien but has priority over the mechanic's lien and the mortgage.

(*d*) The mechanic's lien is junior to the Federal tax lien under the "choateness" doctrine and is junior to the property tax lien but has priority over the mortgage.

Thus, each of the four liens is junior to at least one of the other three and, at the same time, each has priority over at least one of the others.

The four liens total $40,000. Suppose the property sells for $20,000. Under the circular priority rule established by the Supreme Court, the relative priority of the Federal tax lien under Federal law is first determined and satisfied.

Since the Federal tax lien is junior to the $10,000 mortgage under Federal law, $10,000 is first set aside because of the mortgage, and since the Federal tax lien has priority over the other two liens, the balance of the sale proceeds, $10,000, goes to the Federal tax lien, with the $10,000 set aside because of the mortgage left for the other three.

Then, under State priority rules, $2,000 of the $10,000 set aside because of the mortgage goes to the property tax, $8,000 goes to the mechanic, and nothing is left for the mortgage.

This result is bizarre because—

(1) The property tax lien and the mechanic's lien would have been wiped out by the $20,000 Federal tax lien, which would have appropriated the entire $20,000 proceeds, were it not for the adventitious circumstance that there was a mortgage which had priority over the Federal tax lien;

(2) The mortgage saved the day for the property tax lien and the mechanic, but gets nothing, although $10,000 went to the Federal tax lien which was junior to the mortgage under both State and Federal law.

Try to explain that to a layman and just file it.

The bills would largely eliminate this problem by subordinating Federal tax liens on real property to liens for later-arising State and local property taxes and special assessments imposed on such property—just as other liens are subordinated to such after-arising State tax liens and by recognizing the priority of the mechanic's lien over the tax lien where the work was commenced or material first furnished before the Federal tax lien was filed.

7. Attorneys liens: An attorney's lien on the proceeds of a judgment or settlement created by his efforts would be protected, even against Federal tax liens which were on file when the suit was commenced.

This would simply recognize the hard fact that the Government's lien on a delinquent taxpayer's cause of action against a third party is of little value if the taxpayer cannot employ and pay a lawyer to enforce it.

8. Life insurance: The bills also deal with the relative priority of life insurance policy loans. The new rules would simply conform the statutes to the results so far uniformly reached by courts of appeals in applying existing law; but writing them into the statute would end years of controversy and litigation, much still pending throughout the country.

The insurance company would be permitted to pay out the cash or loan value of a policy so long as it does not have actual notice or knowledge of a Federal tax lien against the policyholder.

Thus, the company would not be required to search the records in the policyholder's home county for filed Federal tax liens, and a policyholder in need of funds could draw on his policy values almost as readily as he can draw on his deposit in a bank (which is subject to the same rules).

So-called automatic premium loans—where the company is required by contract to keep a policy from default by automatically applying cash values to pay premiums, would be protected even against known Federal tax liens.

9. Estate and gift tax liens: In addition to the general tax lien discussed so far, the Internal Revenue Code creates a special lien for estate and gift taxes, which arises automatically at the time of the death or the gift (without need for filing of notice, and even though a return is not due, and the amount of the tax is not determined, until much later).

The bills would make changes in the rules for priority of those liens, paralleling the changes proposed with respect to the general Federal tax lien.

There are other important substantive provisions, but I have commented only on those which seem to us to be most significant.

B. PROCEDURAL PROVISIONS

1. Place of filing notice of tax lien: The bills would clear up existing confusion concerning the place to search for notices of Federal tax liens against personal property. That place would be the place where the taxpayer resided when the notice of lien was filed, and not (as some courts have held) the place where the property happened to be located at the time. The present rule for filing at the location of real property would be unchanged.

2. Subordination of tax lien: Existing procedures for freeing property from a Federal tax lien where the Government's interests can be protected in another way would be expanded and made more flexible.

Under present law, a "release" of all the taxpayer's property from the lien is possible by giving a bond; a "discharge" of particular property from the lien is possible by either paying over to the Government the full proceeds of its sale (less the amount of prior mortgages and liens) or by satisfying the District Director that the taxpayer's remaining property is more than ample to cover the tax.

But there is no existing procedure by which a tax lien can be subordinated to a later-arising private lien. The bills would provide such a procedure.

Thus, for example, where a taxpayer is able to borrow money to pay part of the tax, the Government could agree to subordinate its

lien to the lender's security interest for the new loan, which, in turn, was applied on the tax.

Similarly, where a taxpayer needs to borrow money to repair his property, to complete a manufacturing contract, to feed his livestock, or to harvest his crop, the District Director could subordinate an existing tax lien to the security interest for a new loan if he is satisfied that the amount ultimately realizable on the tax liability will be increased and ultimate collection will be facilitated.

The new subordination procedure would be discretionary with the District Director, subject to standards to be established by regulations.

3. Levy: The bills would make a number of technical changes in the procedures for levy on the taxpayer's property, in large part merely clarifying present law. Principally, it would be made clear that a levy extends only to property in possession at the time of the levy.

This is a plaguing problem to banks today. What about deposits that are made today or tomorrow or 6 months later in a branch bank?

A new 50-percent penalty would be added for one who fails to respond to a levy without "just cause."

Perhaps the most important change in levy procedures concerns life insurance policy values. Under present decisions, a levy on the insurance company does not reach the cash value of a policy; thus the Government must institute a cumbersome court proceeding to foreclose a tax lien on a life insurance policy.

By the time of judgment, the premium loans necessary to keep the policy in force during the litigation may consume much of the policy value, and upon complete foreclosure the policy is destroyed. The bills would permit the Government to reach policy values by a simple levy, but in a manner which would not destroy the policy as foreclosure typically does.

If, upon levy, the taxpayer did not make other arrangements within 90 days, the Government would be paid the amount which the taxpayer could have borrowed on the policy (as distinguished from its surrender value), which would leave the policy in force for the protection of the taxpayer's dependents.

4. Redemption from sale: Under present law, the Government may be joined as a party to any suit to foreclose a mortgage or other lien on property on which there is also a Federal tax lien, and thus all claims to the property may be adjudicated on one action.

However, present law gives the Internal Revenue Service no power to bid for the property to protect the Government from a sacrifice sale under a prior mortgage; instead, it gives the Government 1 year to redeem real estate from such a foreclosure sale.

This right of redemption has rarely been exercised, for lack of funds specifically appropriated for the purpose. But the mere existence of the Government's right of redemption—running for a full year—tends to create a cloud on the title that impedes the use of the property and may depress its value on foreclosure sale.

The bills would alleviate this situation by reducing the redemption period from 1 year to 120 days, and hopefully would give the Government's right of redemption more practical value by establishing a million dollar revolving fund to use for redemptions in appropriate circumstances.

They also would prescribe the amount to be paid by the Government for redemption, instead of leaving it, as at present, to varying State law.

The bills also would make a number of technical changes in the procedural rules applicable to such cases.

5. Consent to be sued: Under present law, the Government's consent to be joined in a suit involving property on which it has a lien is confined to foreclosure suits and actions to quiet title. The bills would extend that consent to partition and condemnation suits, and to actions of interpleader.

A perfectly ridiculous situation exists today and has for decades.

The latter change is especially important, as it would relieve innocent third parties on whom a tax levy has been made of the necessity they face under present law deciding, at their peril, whether to pay the Government or some other party who claims a prior lien or assignment.

Since such a third party is in the position of a mere stakeholder, under the bills he would be permitted to pay the money into court, serve a complaint on the Government and the adverse claimants, and then step aside and let them fight it out.

In a situation where a levy is made on property which a third party also claims, the Government is claiming it and a third party is claiming it, in that situation, the party on whom the levy is made is in the position of a stakeholder. He doesn't know whether to pay the Government or the other party who is claiming.

The bills would permit such a person to do what uniformly citizens can do in that situation and other situations, simply pay the money into court, serve notice on the Government or the other claimant and let the Government and the other claimant fight it out.

Under present law, such an innocent third party must decide at his peril whether to pay the Government or the other adverse claim.

6. Nonjudicial sales: Under many State laws, a mortgage or deed of trust may be foreclosed by a simple sale, without going into court at all, and sometimes without even giving notice of the sale to the holders of junior, subordinate, liens.

The Supreme Court, by a 5-to-4 decision a few years ago, held that in such a case a junior Federal tax lien could also be cut off without court action or notice to the Government. That was one of the rare decisions adverse to the Government in the tax lien field, and we think it went too far the other way.

The bills would restore the balance by requiring that the Government be given advance notice of a nonjudicial sale, and by giving the Government the same right of redemption it would have in a judicial sale.

7. Rights of third parties: When the Internal Revenue Service seizes property which it thinks belongs to a delinquent taxpayer but which in fact belongs to someone else, the present law concerning procedures by which the true owner can protect his rights is very uncertain.

In a number of cases, owners have been frustrated by technical procedural defenses in their efforts to get their property back or to prevent its sale by the Government.

The bills spell out specific procedural remedies for such an innocent, aggrieved third party. He may sue to enjoin the wrongful sale of his

property. He may sue to recover the property itself (or its proceeds if it has been sold).

A short (9 month) statute of limitations is provided, because it is important to get such controversies decided quickly so the Government may pursue the taxpayer's own property if it made a mistake the first time. The statute of limitations for collecting a corresponding amount from the taxpayer would be suspended during the pendency of such a controversy.

8. Miller Act bonds: H.R. 11256 contains a provision (sec. 105(c)) which would amend the so-called Miller Act to require that performance bonds on Federal public buildings and public works contracts provide coverage for taxes withheld from wages paid by the bonded contractor.

We note the omission from these hearings of section 3506. We know there are a few remaining problems as to section 3505. These latter two sections would be added by section 105(a) of H.R. 11256.

We earnestly hope that the continuance of these problems will not delay action on the balance of the bills. We respectfully ask for prompt action, to the end that this legislation may reach the Senate in ample time for consideration, and action, by that body this year.

In conclusion and summary, on behalf of the American Bar Association I respectfully recommend, and urge, the prompt enactment of the legislation.

(The attachment to statement referred to follows:)

ATTACHMENT TO STATEMENT OF LAURENS WILLIAMS

American Land Title Association: Whose 2,400 members of abstracting firms and title insurance companies offer a land title service representing approximately 95 percent of all such companies in this country.

American Life Convention and the Life Insurance Association of America: Whose aggregate membership of life insurance companies have in force 93 percent of the life insurance written in the United States.

Associated General Contractors of America: Whose 7,900 member firms in the general contracting business represent approximately 80 percent of the contract construction.

Mortgage Bankers Association of America: Whose 2,000 members composed of mortgage bankers and investors service approximately $55 billion of mortgages and originated approximately $10 billion in 1965 on all forms of residential and income producing real estate.

National Association of Mutual Savings Banks: Whose 500 members represent over 99 percent of the assets of $60 billion of this industry.

National Association of Real Estate Boards: Whose 83,000 members are engaged in all phases of real estate brokerage, financing, appraisal, and management.

National Commercial Finance Conference, Inc.: The national trade association for the commercial finance and factoring industry, with 120 members operating on a national, regional, or local scale.

National Electrical Contractors Association: The National Electrical Association represents 5,000 members in the electrical contracting business who perform approximately two-thirds of contract construction. These members are primarily small businessmen.

National League of Insured Savings Associations: A nationwide trade association representing savings and loan industry members.

National Lumber & Building Material Dealers Association: The national trade association of lumber and building material dealers.

National Small Business Association: National Small Business Association serves a national membership in more than 500 different categories of business, in-

cluding almost every type of manufacturing, wholesaling, retailing, professional, and service organizations.

National Association of Home Builders: Whose 45,000 members represent the residential construction industry throughout the United States.

National Association of Plumbing-Heating-Cooling Contractors: Whose 9,000 members participate in 86 percent of the private dwelling and commercial plumbing installations in the United States.

American Bankers Association: Whose membership in the 50 States represents approximately 98 percent of the commercial banks by number and 99 percent by assets.

United States Savings & Loan League: A national trade association whose aggregate membership comprises over 5,100 savings and loan associations in the 50 States.

(Text of the "Final Report of the Committee on Federal Liens of the American Bar Association," approved February 23, 1959, follows:)

Final Report

of the

Committee on Federal Liens

Approved by

THE HOUSE OF DELEGATES

At its Mid-year Meeting

Chicago, Illinois

on

February 23, 1959

Bills embodying the proposals set out herein, with minor clarifying changes, have been introduced in the 86th Congress as H.R. 7914, H.R. 7915, and S. 2305 (all of which are identical).

THE COMMITTEE

LAURENS WILLIAMS, Washington, D. C., *Chairman*

DAVID A. BRIDEWELL, Chicago, Illinois. Chairman of the Committee on Savings and Loan Law, Section of Corporation, Banking and Business Law.

ALEXANDER M. HERON, Washington, D. C. Former Chairman of the Committee on Fidelity and Surety Insurance Law, Section of Insurance, Negligence and Compensation Law.

KENNETH M. JOHNSON, San Francisco, California. Member of the Section of Corporation, Banking and Business Law.

R. EMMETT KERRIGAN, New Orleans, Louisiana. Member of the Committee on Fidelity and Surety Insurance Law, Section of Insurance, Negligence and Compensation Law.

EARL Q. KULLMAN, New York, N. Y. Chairman of the Committee on Relative Priority of Government and Private Liens, Section of Real Property, Probate and Trust Law.

HARRY K. MANSFIELD, Boston, Massachusetts. Former Secretary of the Section of Taxation.

WILLIAM T. PLUMB, JR., Washington, D. C. Chairman of the Committee on Federal Tax Liens and Collection Proceedings, Section of Taxation.

DANIEL S. WENTWORTH, Chicago, Illinois. Member of the Committee on Relative Priority of Government and Private Liens, Section of Real Property, Probate and Trust Law.

EMERITUS

HAROLD F. BIRNBAUM, Los Angeles, California, Former Chairman of the Special Subcommittee on the Relative Priority of Liens, Section of Corporation, Banking and Business Law.

70-903 O-66—9

The unanticipated demand for copies of the interim Report which this Committee presented to the House of Delegates at the 1958 Annual Meeting in Los Angeles quickly exhausted the available supply. In view of the surprisingly widespread interest in the subject matter, in this its Final Report the Committee has again undertaken to explain, in considerable detail, the current status of the law respecting federal liens, and to present an analysis of the difficult problems and disturbing uncertainties the current law creates for the business and financial community. The Committee hopes that, by making available to interested persons—in a compact, relatively non-technical (we hope) document—the references, source materials, and practical considerations essential to sound legislative solution of the important, complex problems which have arisen in this field in recent years, it will facilitate appreciation and understanding of the importance of early consideration by the Congress of remedial legislation. This Final Report also contains, of course, the Committee's final conclusions and recommendations, with detailed technical explanation of the draft legislation it has developed.

NOTE: Extra copies of this Final Report may be obtained, at the Association's printing cost of $2.00 per copy, from

AMERICAN BAR ASSOCIATION

1155 East 60th Street

Chicago, Illinois

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Report

Purpose of the Committee

A succession of decisions by the Supreme Court of the United States, commencing in 1950, has appeared to many to extend substantially the scope of the federal tax lien and, in vital areas, to create serious doubt of the extent to which creditors are secure *vis-a-vis* the federal tax lien—even where their debtor does not become delinquent in his taxes until long after the credit is extended. This extension of the scope of the federal tax lien and the uncertainties the decisions have created have had a severe impact on innumerable business and commercial transactions, and have caused increasing concern on the part of many lawyers throughout the country.

As a result, the Section of Corporation, Banking and Business Law, the Section of Insurance, Negligence and Compensation Law, the Section of Real Property, Probate and Trust Law, and the Section of Taxation, acting independently, commenced study of the matter as long as four years ago. Each Section was considering proposals for remedial legislation. To correlate the work which had already been done within the four Sections, and to centralize further work within a single group, the House of Delegates created this special committee under the name of the "Committee on Federal Liens" at the mid-year meeting in February 1958. The Committee is comprised of two members from each of the four Sections, and the Chairman.

The resolution creating the Committee charged it with the responsibility of making a comprehensive report to the House of Delegates at the 1958 annual meeting in Los Angeles regarding the present status of federal liens, and of submitting proposed draft amendments to the lien statutes "and such other related statutes as appear desirable in order to provide greater equity as between federal tax liens and other lienors and claimants, and to clarify the entire matter".

Work of the Committee

Since their appointment March 31, 1958, all members of the Committee have met in Washington, D. C., on four occasions, covering ten full days. In addition, extensive research has been done by all members and there has been thorough exploration of all facets of

the problem. The Committee has carried on extended correspondence and held conferences with other interested lawyers and representatives of business groups, as well as voluminous inter-member correspondence and protracted conferences among committee members and with Government personnel. The magnitude of the assigned tasks, the intricacy of the problems encountered, the complexities inherent in the area, the importance of balancing the Federal Government's dominant need for protection of the revenue against the impelling need of the business community for certainty and security, and the need to insure, so far as may be, that any legislative proposal will not have some unforeseen adverse impact on government or on business, made it immediately apparent to the Committee that it could not wisely make final recommendations to the House of Delegates by the time of the Los Angeles meeting.

Accordingly, in May, 1958, your Committee concluded it best could serve the House by assembling, analyzing, and presenting to the House (and for wide dissemination among interested groups and persons) a report explaining, in substantial detail, the current status of the law regarding federal liens, an explanation and analysis of the difficult problems and the plaguing uncertainties this creates for the business community, and, without recommendation at that time, draft proposals for remedial legislation which it then had under consideration. At the annual meeting in Los Angeles, the Committee presented a comprehensive interim Report to the House of Delegates. The House approved the Committee's then recommendation that it be continued in existence until the adjournment of the 1959 mid-year meeting, in effect continuing it to the end of the current Association year.

Your Committee now has completed its assignment and submits this, its Final Report.

Two important acknowledgments seem appropriate.

The Committee acknowledges the very important contribution to its final product which has been made by Government career personnel. Representatives of the Staff of the Joint Committee on Internal Revenue Taxation, the Legal Advisory Staff of the Treasury Department, the Office of Chief Counsel of the Internal Revenue Service, and the Collection Division of the National Office of the Internal Revenue Service have worked with the Committee, in its technical sessions, on four Saturdays and Sundays, including the 4th of July weekend, without compensation. The Committee takes this means of expressing its gratitude to these experienced and

competent career professional people for the immense contribution they have made to the Committee's work, and to their superiors who made their assistance available to the Committee. As is obvious, their participation and assistance in the work of the Committee did not constitute, and should not be construed to imply, any commitment of any of the Government offices mentioned to approve this Committee's recommendations in whole or part.

In addition, the Committee takes this means of recording its recognition of the contribution made by Harold F. Birnbaum, Esq., Los Angeles, California, to the Committee's work and to its final conclusions and recommendations. Mr. Birnbaum found it necessary to resign from the Committee late in 1958. Mr. Birnbaum's vast experience, superb scholarship, and sound practical judgment and advice contributed enormously both to the progress of this Committee's work and the quality of its final product.

Explanation of the Problems

The general problem arises out of the following: By statute, the general federal tax lien attaches to all property "belonging to" the taxpayer. I.R.C. Sec. 6321. Although the question of whether a certain property right "belongs to" the taxpayer is a question of state law (*United States* v. *Bess*), priority between the federal tax lien and competing liens against such property is a federal question, not a question of state property law. (*United States* v. *Acri*). Although the Supreme Court has declared the controlling rule of lien priorities to be that "the first in time is the first in right" (*United States* v. *City of New Britain*), it has proceeded virtually to nullify that principle in a series of decisions holding that to enjoy priority over a federal tax lien a competing lien (although completely valid and perfected under state law) must also be "choate" in the federal sense—by which the Court means not only that such lien must have attached to specific property but also that the exact amount of such lien must have been finally fixed beyond controversy, as by entry of final judgment thereon. Thus, in effect the Supreme Court has said that the time as of which a competing lien acquires priority *vis-a-vis* a federal tax lien is the time as of which the competing lien has become "choate" in the federal sense. On the other hand, the federal tax lien arises automatically as of the time the tax is assessed (I.R.C. 6322) and the Supreme Court deems such lien "choate" for priority purposes at that time. The act of assessment is an administrative act, an internal

procedure within the Internal Revenue Service which is not open to public inspection, of which there is no public notice. The federal tax lien is thus "choate"—a perfected lien—as of the moment of assessment, whether or not notice of the lien is subsequently filed of public record.

Thus the Supreme Court applied the "choateness" test in granting priority to a federal tax lien over a statutory mechanic's lien, where the mechanic's work had been completed, his mechanic's lien had been duly filed in strict compliance with state law, and foreclosure proceedings on such lien were actually pending in the state court, all before the federal lien first arose by assessment. (*United States* v. *White Bear Brewing Co.*) The "choateness" test also has been applied to contractual security. Thus where, in full compliance with state law, the taxpayer's property rights were duly and completely assigned to a surety as collateral security on a performance bond, long before the federal tax lien arose, the federal tax lien was accorded priority because the surety's lien was deemed "inchoate"—the surety's liability, though completely incurred and utterly inescapable, had not become fixed and definite in amount at the time the federal tax lien came into existence. (*United States* v. *Ball Construction Co.*) Since there is no certainty how far the "choateness" test will be extended, and what other commercial transactions may be vulnerable to attack, there are grave implications flowing from these decisions.

Proposals Considered

One suggestion for solution of these problems was that the federal statutes be amended to provide that the priorities of federal liens and competing claims, as well as the taxpayer's property rights, shall be determined by state law, so that the federal tax lien would take its place as to priority along with all other liens, claims or interests against or in the property, all as established by state law (except that no lien, other than a state or local property tax lien, arising under state law as of a date after notice of the federal tax lien is filed would be given priority over the federal lien). Proponents of this approach suggested that it would provide a simple and comprehensive solution to the existing problems. In support of the approach, they suggested that Congress intended, when it enacted the present federal lien statute, to put the federal tax lien upon the same basis under state law as competing liens and that if, as the courts hold, this was not accomplished, it was mere

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legislative oversight. They asserted that the "simple" amendment would minimize litigation. They believed that any attempt by a State improperly to subordinate the federal lien to some other claimant under state law would be prevented by the proviso (in the parenthetical clause above) according priority to the federal tax lien as of its date of filing, except as to state and local property tax liens.

The alternative suggestion was the so-called "selective federal" approach under which, on a selective nationally uniform basis, Congress would determine how far state law priorities shall govern as against the federal tax lien. Its proponents consider such approach a middle ground between abject acceptance of federal sovereign supremacy, according absolute first priority to federal tax liens in all situations, and complete subordination of federal revenue collections to state legislatures. They suggest that state priority laws were adopted with reference to the competing interests of private claimants, without the Federal Government in mind—and that, in many cases, the several States exempted themselves from the very priorities which it is sometimes urged should be applied against the United States. They declare that, in every priority case, someone is likely to have his just claim unsatisfied, and that the merits of each type of case should be weighed to determine whether it ought to be the Federal Government or the competing lienor who should have priority. They believe that only Congress will properly protect the Federal Government's interests, just as the several States have looked out for their own interests in setting up their systems of priority. They believe that Congress should make the policy decision as to where the federal tax lien should rank in relation to various other categories of competing lien interests. They believe that practical considerations overwhelmingly favor the "selective federal" approach—that Congress is far more apt to adopt remedial legislation the effect of which in particular situations can be determined with certainty, than it would be to enact a "blank check" statute which would leave the federal priority at the mercy of whatever interests particular States might choose to favor with a "lien", with inevitable loss of uniformity of treatment of citizens of different States. They suggest that a detailed legislative draft, from which Congress readily may drop unacceptable provisions, has much more chance of enactment than a sweeping proposal to make state law control on virtually all matters. They point to experience with the Internal Revenue Code of 1939 as demonstrating that "simple"

provisions, which leave innumerable questions unanswered, produce neither business certainty nor freedom from litigation.

The "selective federal" approach is described as a combination of state and federal standards. Under it, no federal system of property rights would be set up; no person would be granted any lien, claim or interest which he did not possess under state law or by valid contract. Under this approach, federal law would set limits (in each instance tailored to the circumstances of particular types of liens) beyond which such lien would not be recognized as against the federal tax lien. Its proponents believe this would accommodate to practical business convenience as well as the necessities of an effective tax collection system.

Conclusions of the Committee

After exhaustive analysis and evaluation of each of the suggested solutions, and thorough probing of all the practical considerations bearing on the problem of which the Committee is aware, the Committee unanimously has concluded that it should recommend to the House of Delegates draft legislation embodying the "selective federal" approach. As naturally was to be expected where there are countervailing considerations such as are described above, several members of the Committee preferred that the "state law" approach be recommended. However, they have joined with the majority and the recommendations of the Committee are unanimous. Perhaps it should be stated that such members have joined in the recommendations with some hesitation, because of their belief (not shared by the other members of the Committee) that sooner or later, in the course of further consideration of the constitutional division of authority between the United States and the several States, the Supreme Court of the United States may reverse the trend of the decisions which have created the current concern, and may hold that the laws of the several States determine relative priority, not only of liens created under state law but also of the federal tax lien, all as a matter of local property law.

In addition to the foregoing, pursuant to its mandate to consider related statutes, to provide greater equity as between federal tax liens and other lienors, and to clarify the entire matter, the Committee considered and now unanimously recommends draft legislation covering priorities in insolvency situations, the rights and obligations of debtors of the taxpayer, and a number of important procedural matters.

Recommendations

The recommendations of the Committee are embodied in a single draft proposal for legislation, which contains three Titles, involving somewhat separate but interrelated phases of the general subject.

Title I is designed to remedy the situation created by the recent decisions of the Supreme Court of the United States referred to above. In general, subject to certain accommodations to the necessities of tax administration and the equities in favor of the Government, it would protect the security of those who, before a federal tax lien is filed on the public records, extend credit on the faith of contractual or statutory liens on the taxpayer's property. It would make a number of other revisions in the rules governing tax lien priorities, as described in the resolution, below. In addition, this draft legislation would clarify and provide certainty in respect of the obligations of debtors of the taxpayer *vis-a-vis* the Federal Government's rights under its tax lien. It also would clarify and codify the procedural rights and remedies of third parties whose property interests are seized or threatened with seizure to pay the taxes of another.

Title II is designed to bring the priority of the United States in non-bankruptcy insolvency proceedings, including insolvent estates of decedents, substantially in line with priorities under the National Bankruptcy Act. At present, under a statute last revised in 1799, the United States enjoys an absolute priority in non-bankruptcy insolvencies, even over most (if not all) pre-existing liens.

Title III is designed principally to facilitate the removal of clouds on title resulting from the existence of subordinate federal liens, by broadening the consent of the United States to be joined in actions involving the determination of rights in and liens upon property; by eliminating the Government's present one-year right of redemption from foreclosure sale; by making it clear that the Government is bound by the doctrine of *lis pendens* when it holds an unfiled lien or acquires a lien after a suit is commenced affecting the property; and by permitting the discharge of federal liens by non-judicial sales under prior liens. The proposal assures the United States of notice of actions or sales which may have the effect of cutting off its lien, entitles the Government to intervene in such actions, and modifies the rules concerning removal of such actions from the state to the federal courts. It also makes clear that the United States may be interpleaded whenever it makes claim to a debt or other property to which others made adverse claims.

Your Committee recommends adoption of the following resolutions:

Resolution Number One

RESOLVED, That the American Bar Association recommend to the Congress:

Title I: Priority and Effect of Federal Tax Liens and Levies

THAT the provisions of the Internal Revenue Code of 1954 relating to federal tax liens and levies, and procedural provisions with respect thereto, and Section 1346 of Title 28, U.S. Code, be amended, in order, without impairing the effectiveness of tax collection procedure,

(1) to provide reasonable protection to persons who extend credit or incur obligations in reliance upon liens on the property of a taxpayer, or who add to the value of the taxpayer's property;

(2) to protect the state and local tax base by consenting to the priority of real property taxes and special assessments upon the property taxed or assessed;

(3) to protect contract purchasers, optionees, lessees and others from loss resulting from the priority of secret federal tax liens;

(4) to provide definite rules concerning the situs for filing of federal tax liens and the effect of knowledge of an unfiled federal tax lien;

(5) to protect obligors and bailees of a taxpayer from being subjected, by reason of the taxpayer's delinquencies, to obligations and risks more onerous than they had contracted to assume;

(6) to clarify and codify the procedural rights and remedies of third parties whose property interests are seized or threatened with seizure for the taxes of another; and

(7) generally, to revise the provisions of the Internal Revenue Code with respect to priorities and procedure, to provide greater equity and certainty; and

THAT the Association proposes that this result be effected by amending Sections 2205, 2501, 6323, 6324, 6325, 6332 and 7403 of the Internal Revenue Code, by adding a new Section 7431 thereto, by repealing Section 7424 thereof and by amending Section 1346 of Title 28, United States Code; and

Title II: Priorities in Insolvency Proceedings

THAT the provisions of the United States Revised Statutes relating to priorities in insolvency proceedings be amended in order to bring such priorities in line with the policies expressed in the National Bankruptcy Act, and to provide greater equity for creditors of the insolvent; and

THAT the Association proposes that this result be effected by amending Section 3466 and 3467 of the United States Revised Statutes (Title 31, United States Code Sections 191 and 192); and

Title III: Consent of the United States to be Sued in Actions Affecting Property in Which It Has a Lien or Other Interest

THAT the provisions of Title 28, United States Code, relating to the consent of the United States to be sued in actions affecting property on which it has a lien be amended in order:

(1) to permit joining the United States as a party defendant in any action involving the determination of rights in or liens upon property;

(2) to permit the United States to be interpleaded when the United States and another party make claims to a fund or other property;

(3) to provide for the discharge of a subordinate lien or interest of the United States by a nonjudicial sale under a prior lien;

(4) to eliminate the right of the United States to redeem real property from foreclosure sale;

(5) to make clear that the doctrine of *lis pendens* will bar any federal lien which was not filed prior to the commencement of any action for the foreclosure or determination of rights in property, if the United States does not intervene in the action after due notice thereof; and

(6) to modify the rules concerning removal from state to federal courts of actions involving the determination of rights in or liens upon property, to which the United States is made a party, to the end that non-federal issues may more often be left for the determination of state courts; and

THAT the Association proposes that this be accomplished by amending Sections 1444, 1446 and 2410 of Title 28, United States Code.

Resolution Number Two

BE IT FURTHER RESOLVED, that the House of Delegates direct the appropriate person or group to urge the amendments set out in the Final Report of the Committee on Federal Liens, or their equivalent in purpose and effect, upon the proper committee or committees of Congress.

Respectfully submitted,

LAURENS WILLIAMS, *Chairman*
DAVID A. BRIDEWELL
ALEXANDER M. HERON
KENNETH M. JOHNSON
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APPENDIX

Part I

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Problems of Mechanic Lienors

The mechanic or materialman who adds value to real property by improving or repairing it has long been a favorite of the law. All States provide, in one form or another, for a lien upon the property improved (except in the case of public property), and some States go so far as to favor such lien even over prior encumbrances, to the extent of the added value. Many laws also give the mechanic an interest in the nature of a lien or trust upon the unpaid proceeds of the contract.

The mechanic lienor, however, has fared badly as against the federal tax lien. Four times his priority has come before the Supreme Court, and each was decided adversely by a *per curiam* decision. *United States* v. *Colotta; United States* v. *White Bear Brewing Co.; United States* v. *Vorreiter; United States* v. *Hulley.* In the *White Bear* case, the mechanic lienor had completed the work, filed his lien, and commenced foreclosure thereof before the federal lien arose and was filed. Plainly, a mechanic lienor has no protection against the federal tax lien, under the doctrine of ''choateness'', until he has reduced his lien to judgment. Procedure to reduce a mechanic's lien to final judgment is normally time-consuming. Because a mechanic's right is generally effective against other creditors from the commencement of the work, if not earlier, and because of ordinary business practices, mechanic lienors do not ordinarily press for their enforcement as speedily as might be possible. Consequently, the contribution of labor and materials made by subcontractors, laborers and suppliers may result in the creation of property which is appropriated for the payment of a federal tax of the owner, leaving the mechanic lienors practically remediless.

The situation of the mechanic lienor is similar with respect to his lien or trust upon the contract proceeds. The courts have held that the contractor has a property right in the proceeds, even if subcontractors and suppliers are unpaid, and that their claims against the fund they created are mere inchoate liens, which fall before a federal tax lien against the contractor arising and filed at any time before they get judgment. *United States* v. *Kings County Iron Works; Aquilino* v. *United States.* The courts have recognized an exception to that rule where the owner is under a direct obligation, by law or contract, to pay those who furnish labor or materials. In such a case, the contractor (taxpayer) has not earned his right to the contract proceeds unless he pays such claims, so he has no property right in the proceeds to which the lien can attach. *United States* v. *Durham Lumber Co.* But, at the time this is written, the Government is contesting that position by petition for *certiorari.*

Proposed Title I, § 6323(c) would give mechanics' liens priority over federal tax liens which are unrecorded at the time the mechanic's lien is effective under state law. Proposed Section 6323(o)(5) would give mechanics' liens priority in contract proceeds even against pre-existing federal tax liens filed against the contractor. Such priority, in either case, would not extend to a federal tax lien for withholding taxes on the job out of which the mechanics' liens arose, since such taxes are considered as much a part of the cost of the job as the wages of which they are a part. Proposed § 6323(i).

Problems of Mortgagees

By the terms of Section 6323(a), I.R.C., a federal tax lien, imposed by Section 6321, I.R.C., is not "valid as against any mortgagee . . . until notice thereof has been filed . . .". Because of this requirement for the recording of a federal tax lien, it was thought until recently that the usual recorded mortgage was not in serious jeopardy from the impact of federal tax liens—at least insofar as advances made prior to the recording of a federal lien and obligatory advances made after the recording of the federal lien.

At least, this was the view until the 1958 decision of the United States Supreme Court in *United States* v. *R. F. Ball Construction Co.* That case extended to contractual liens, in the nature of mortgages or pledges, the requirement that they must be "choate" in order to be valid against the federal tax lien. Apparently, therefore, under that decision, any future or contingent advance of any kind—optional or obligatory—made by a mortgagee after the filing of the tax lien would be subordinated to the federal tax lien under that principle.

Prior to the *Ball* decision, the Internal Revenue Service had taken the position that Section 6323, I.R.C., which requires a federal tax lien to be recorded in order to take priority over a mortgage, afforded no protection to mortgagees under prior recorded mortgages where the obligation to make advances was entirely *optional.* In Revenue Ruling 56-41, the Internal Revenue Service so ruled with respect to additional advances made under a recorded open-end mortgage in accordance with the expressed terms of the mortgage and the State law on the subject, but subsequent to the time a notice of federal lien was recorded against the mortgagor.

Obligatory advances "definitely contracted for and required to be made under a properly executed and recorded construction loan mortgage", however, were excepted from the ambit of the above open-end ruling. (Unpublished Ruling A-619373, issued August 24, 1956).

The *Ball* decision not only affirms the long established position of the Internal Revenue Service with respect to *optional* advances, but casts grave doubt on the security of construction loans and other arrangements for *obligatory* advances until each advance has actually been made, which the Service previously had ruled would be valid as against an intervening federal tax lien.

Furthermore, the *Ball* decision has raised serious doubts whether the statutory priority of a mortgagee or other lienor extends to interest accruing after the tax lien is filed. Heretofore, it has been assumed that such interest enjoyed the same priority as the principal. *United States* v. *Sampsell; Glenn* v. *American Surety Co.* The same is true of the mortgagee's expenses of foreclosing, insuring and repairing the property, where the law or contract provides for such priority. The *Sampsell* case allowed such priority, but the contrary is indicated in *In re New Haven Clock & Watch Co.* and *United States* v. *Lord.*

The federal tax lien is effective automatically against after-acquired property *(Glass City Bank* v. *United States);* and, at present, prevails over previously recorded security interests in after-acquired property, whether such security interest relates to future advances *(United States* v. *Phillips),* or is substituted security for a prior debt *(Stockholders Publishing Co.* v. *Smith).*

Proposed Title I, Section 6323(a)(2) would protect, to the extent that state law does so, the priority rights of those holding security for obligatory future advances, and for certain advances which are "necessary" even if not strictly obligatory (*e.g.,* advances to complete construction, crops, contracts, etc., which have been started, or to insure, repair, and preserve the property and expenses of enforcing the debt).

In the case of truly optional financing, under open-end mortgages, lines of credit on inventory and receivables, and the like, the Committee concluded that reasonable conditions should be imposed on the lender's enjoyment of his customary priority under state law. Under many state laws, such a lender need only record the mortgage or file notice of the commercial financing arrangement, and the lien for his later voluntary advances will then be superior to intervening private liens unless he is given express notice of them before he makes subsequent advances. That rule, however, was developed by balancing the convenience of the parties: since the intervening encumbrancer would normally have discovered the prior mortgage upon searching the title, it was more reasonable to require him to give express notice to the prior mortgagee than to require the latter to make repeated title searches whenever he was about to make an advance. But if the federal tax lien were made subject to that rule,

the District Director would be required to make a title search and/or a check with a state office whenever a tax lien was filed. That would involve substantial expense and increased personnel. As a practical matter the Director would be unable to prevent further borrowing by which the taxpayer could convert his property into spendable, concealable cash, after the tax lien is filed.

The proposed legislation, therefore, attempts to accommodate to the necessities and convenience of both parties by providing the tax collector with a file of information within his own office, on the basis of which he could give actual notice to mortgagees. Those who elected to avail of such procedure (which would not be mandatory), by notifying the tax collector of the arrangement, would be relieved of the necessity of watching for the filing of tax liens, and could safely make advances until expressly advised that a tax lien had been filed. See Appendix, Part II, Technical Explanation of Title I, Section 6323(a)(2)(E).

In the case of mortgages covering after-acquired property, the proposal would protect private lienors, to the extent that state law does so, in those situations where there are obvious equities in favor of the mortgagee: where the additional property was obtained or created by means of the financing, or where (as in the case of equipment trusts or revolving loans on inventory or receivables) the new collateral is substituted for other security and is necessary to maintain the value of the security. For practical reasons, the priority of the mortgage would also be recognized with respect to accessions to the property, which physically become a part of the security, even though not financed by the lender. But, in the case of a mere blanket mortgage, where the additional property is neither financed by the loan nor substituted for or attached to the mortgaged property, the mortgagee's priority as against the federal tax lien would be "frozen" at the time the notice of the tax lien is filed, and he would not be preferred to the federal lien with respect to later acquisitions. The rules are described in detail in Appendix, Part II, Technical Explanation of Title I, Section 6323(a)(3).

Problems of Banks

a. *Bank Deposits.* The present law relative to the application of a federal tax lien to bank deposits may be characterized as unsatisfactory in theory but satisfactory in practice.

Theory: The federal tax lien arises under Section 6322, I.R.C., when the tax is assessed, and attaches to the tax delinquent's bank account under Section 6321, I.R.C. Therefore, in theory, the bank is

liable to the Treasury for all withdrawals which its depositor makes after the assessment is made. However, at that time the lien is secret, so far as the bank is concerned.

Practice: Since banks would have great difficulty if the above theory were literally applied, the practice of the Internal Revenue Service is to give banks actual notice of levy against a delinquent taxpayer under Section 6332, I.R.C.; thereafter, the bank is expected not to allow any subsequent withdrawals which would reduce the depositor's balance below the amount of the lien.

Rev. Rul. 57-367 states that a bank will not incur liability for paying out deposits after notice of a lien is filed, if the bank does not have actual notice or knowledge of the lien (as distinguished from constructive notice) and in the absence of negligence or fraud. The ruling states that, if the bank does have actual notice or knowledge, it should protect itself against the possibility of liability by notifying the Director of the facts and by asking him what to do, meanwhile withholding payments. This warning has worried some banks, especially large banks with many branches, and they are hopeful that there will be no change in the practice of giving the banks actual notice of levy.

Banks have further been concerned about the possible continuing effect of a levy on a bank deposit. If a levy has been made, and the bank pays over the amount then in the account, which is less than the amount of the levy, the bank then has actual, and not merely constructive, knowledge of an unsatisfied tax lien (the unpaid balance of the levy), although its information on the amount unpaid would quickly become outdated. For the bank to remain alert for future deposits by the taxpayer would be a severe burden.

Proposed Title I contains clarifying amendments to Section 6332 (relating not merely to banks but to all persons who owe money to the tax delinquent or hold property for him). It would be made clear that (in conformity with decisions under present law) a levy has no continuing effect, but obliges the person levied upon merely to turn over the money then owed or the property then held; and that no liability will be incurred by reason of a payment or delivery to the taxpayer prior to another levy on the particular debt or property, even though the bank (or other such person) had knowledge of an unpaid tax liability, if the payment or delivery is not made in bad faith, with intent to defeat collection of the tax.

b. *Set-off.* Banks usually assert the right to set off the depositor's indebtedness to the bank against the depositor's bank balance. In

theory, this right can be asserted at any time. In practice, the set-off is not made until one of the following events occurs:

(a) the depositor so requests; or

(b) the depositor is in default to the bank to an extent which causes the bank to elect to exercise the set-off; or

(c) the bank receives notice of a judicial levy; or

(d) the bank receives notice of levy under a federal tax lien.

Even though the bank has, under state law, the right to exercise the right of set-off after notice of a judicial levy, a recent case applies the "choateness" test and holds that a bank cannot set-off after notice of a federal tax lien. (*Bank of Nevada* v. *United States;* see also *Beeghley* v. *Wilson.*)

Title I contains the following proposal (Section 6332(d)), which applies to all debtors of the taxpayer:

(a) The taxpayer's debtor may assert any valid set-off or defense which he could have maintained if an action had been commenced against him by the taxpayer at the time of the levy (or at the time his indebtedness to the taxpayer matured, if later than the levy), unless the set-off or defense was acquired in bad faith, with intent to defeat a lien known to the debtor.

(b) The Government's levy is not invalidated by its failure to surrender any requisite receipt, pass book, document of title, negotiable instrument or other specialty; however, the Government must indemnify the debtor against any resulting loss or expense.

c. *Other Problems.* Banks, of course, are affected by many other problems dealt with in this report. Their problems as mortgagees have already been discussed. They are also particularly affected by problems dealt with below under the headings of "Circular Priority" (relating to the treatment of state and local taxes and other claims which, by state law, are preferred over a mortgage although subsequent in time to both the mortgage and the federal tax lien); "Federal Estate and Gift Tax Liens"; and "Procedural Problems" (with particular reference to procedure for discharging junior federal liens through mortgage foreclosure suits or by non-judicial sale; interpleader suits by a person levied upon, when there are adverse claimants; release or discharge of the tax lien; and penalty for noncompliance with a levy). The Committee's recommendations for solution of these problems also are set out and described in detail in the proposed draft legislation and technical explanation, in Part II of this Appendix.

Problems of Sureties and Insurance Carriers

The growth of corporate sureties and the tremendous expansion of insurance carriers commencing shortly before the beginning of the 20th Century has resulted in the development of a body of law peculiar to the problems of that industry. Doctrines applied in this field have produced recognition of the rights of sureties and insurers, often spoken of as "equitable" in nature and generally derivative. In addition, are those contractual or conventional rights, somewhat more static in character but often subject to equitable limitations in their enforcement. Over this area of law is laid the grid of arbitrary rules for the enforcement and collection of federal taxes. Because the Government's concern in tax enforcement is with problems unrelated to rules which control rights as between private contenders, incongruities and conflicts occur on every hand. With increasing tax burdens, the problems have multiplied and continue to do so.

One of the simple examples of the problems which have arisen, and one which is mechanical in character, is that which confronts any carrier of life insurance when myriad notices of tax liens come into its hands. Its insureds have varying policy rights which may be translated into dollars. The liens may be small, they may be promptly discharged by the taxpayer; but the insurance carrier must process the tax claim and take care that, by some payment under the policy, it does not lay itself open to double payment. If the taxpayer discharges the claim, the carrier will probably not know of it, for the Government has no obligation to withdraw its notice.

Another facet of this general problem is illustrated by the June 9, 1958 decision of the Supreme Court that the proceeds of life insurance (after death) are subject to seizure for taxes assessed against the decedent prior to death, to the extent that the decedent had an interest in the cash surrender value at the time of death. *United States* v. *Bess*. The impact of the decision is chiefly on the widows and children who are the recipients of the insurance, but it is of concern to the insurance carrier which must determine to whom payment must be made.

Another problem arises when an insurer becomes subrogated to his insured's right of action against the tortfeasor causing the damage or injury which the insurer has compensated. If the tax lien were pending prior to the occurrence of the incident which gave rise to the right of action, it would seem that the right of action in favor of the taxpayer would be subject to the lien at the time it arose. On the other hand, if the subrogation to the insured took place before the tax lien arose, it should follow that this was a right of action which the

taxpayer did not possess as part of his estate when the tax lien attached. This leaves for resolution the respective rights of the government and the subrogee in those instances in which the cause of action accrued to the taxpayer before the tax lien arose but the subrogation did not take place until after the tax lien arose.

Far more complicated is the determination of priority between the federal taxing authority and the surety on a contractor's payment and performance bond. Historically, the right of the surety to the contract funds has been recognized. It has been said that the surety is entitled to be indemnified out of the contract price, held by the owner, for the losses that the surety suffers. The character of the right, from whom it derives, and the priority to be accorded it are matters in great confusion.

The early cases of *Prairie State Bank* v. *United States* and *Henningsen* v. *United States Fidelity & Guaranty Company* recognize the surety's right as a derivative one. The sense of these cases is that the surety, by paying off the encumbrances upon the owner's property, is subrogated to the rights of the owner.

Later cases also recognized that by payment of the laborers and materialmen, the surety obtains an assignment of their mechanics' liens.

Finally, as a matter of routine practice, the bondsman ordinarily is secured by an indemnity agreement from his principal, the contractor, under the terms of which the surety is assigned many of the contractor's rights including those in the unpaid contract price. In this way, the surety may assume a third posture and qualify to make whatever claims the contractor himself might have had.

The abundance of rights has caused some of the confusion. They are not mutually exclusive of one another and the surety often may have rights under two or even all three of these approaches. Often the subrogation to the rights of the owner has proven the most serviceable approach, but, unfortunately, there are many instances when the surety is thought of only as an assignee of the mechanic's lien. If the rights of the surety are limited to the rights of the laborers and materialmen, the surety's preeminence over the United States tax lien is in grave danger, for the Supreme Court, by requiring a "choate" lien, seems to have subjugated the mechanic's lien to the tax lien. It is to be assumed that one claiming the same lien by derivation from the mechanic would be accorded similar treatment.

Since, under the Assignment of Claims Act, the surety may not obtain a valid assignment from the contractor on federal jobs, the third approach is of little protection where contracts with the United States are involved. Moreover, the decision of the Supreme Court in

United States v. *Munsey Trust Company* seems to eliminate any problem with regard to a conflict between a tax lien and the surety's claim by according the United States the right of set-off where it holds contract funds in which a surety may have an interest.

On the other hand, if the surety claims rights in the fund as a subrogee of any owner other than the United States, the surety will probably be given the fund in preference to a federal tax lien. This is because the tax lien applies only to property "belonging to" the taxpayer himself. When the contractor-taxpayer fails to pay all of the laborers and materialmen he is required to pay under his contract, he has no right to claim the contract price and the United States, which for these purposes stands in his shoes, can have no greater right in the fund. This concept has been recognized in *United States Fidelity & Guaranty Co.* v. *Triborough Bridge Authority; United States Fidelity & Guaranty Co.* v. *United States; Vincent* v. *P. R. Matthews Co.;* and *Fidelity & Deposit Co.* v. *New York Housing Authority.* The Government, however, at the time of this writing, has petitioned for *certiorari* in *United States* v. *Durham Lumber Co.,* which (while it involves a mechanic lienor rather than a surety) might cast some light on this issue.

It is interesting to note that the Supreme Court of the United States cited *Fidelity & Deposit Co.* v. *New York City Housing Authority* with approval in *United States* v. *Bess.* In the *Bess* case the Supreme Court held that, although the federal tax lien attached to the taxpayer's life insurance to the extent of the cash surrender value, it did not attach to the balance of the proceeds payable to his wife because, among other things, the decedent himself did not have a "property" or "rights to property" in those proceeds under state law. In doing this, the Supreme Court held that what is "property" of the taxpayer under the federal lien statute is to be determined by state law.

From the standpoint of policy, there is a strong case for the position of the surety *vis-a-vis* the federal tax lien. The surety is required to see to the full performance of the contract it has bonded and to pay the laborers and materialmen who contribute to the creation of the new work. It contributes to the creation of the asset by responding to these obligations and assuming these risks. The value of the thing created is represented by the contract proceeds and it would be grossly inequitable to divert these proceeds to satisfaction of federal tax liens utterly unrelated to the assets created by the surety's contribution.

The equity of the surety's position has long been recognized in those cases in which the courts earmark the contract funds as a pledge

to the reimbursement of the surety. No good reason appears why the policy of the last half century should be abandoned and the surety's rights in the contract funds lost.

Proposed Title I, Section 6323(o)(5) would give priority to sureties in contract proceeds, even over pre-existing federal tax liens filed against the defaulting contractor.

A different problem is presented where the surety, instead of claiming rights in the contract proceeds as a subrogee of the owner, is claiming rights as assignee of his principal, the contractor, in funds other than the proceeds of the bonded job. In that situation, the reasoning which led to subordination of the federal tax lien to the rights of the surety in the above cited cases could not soundly be applied. Thus, in *United States* v. *Ball Construction Co.* the Supreme Court accorded priority to a federal tax lien over a surety's rights under an assignment made by its principal. The surety had bonded two jobs for the same contractor and had received blanket assignments of the contractor's rights to contract proceeds of both jobs. Thereafter, the federal tax lien against the contractor arose, and later on the contractor defaulted on one job, which default the surety made good. The dispute concerned contract proceeds owing to the contractor on the other job as to which there had been no default by the contractor. Thus both the surety and the United States derived their rights through the contractor. The Supreme Court, holding the surety's assignment "inchoate", subordinated it to the federal tax lien.

The practical effect of this decision is to raise a caveat concerning federal tax liabilities an assignor may incur subsequent to assignment and to create serious doubts as to the effectiveness and worth of the security a surety receives under the assignments surety companies customarily take in the usual course of their business. The surety's rights under such assignment are "inchoate", under the present definition, and subsequent advances and payments by the surety under construction contract bonds, fidelity bonds, appeal bonds, attachment bonds, probate bonds and the like, though obligatory, are subordinated to an intervening federal tax lien.

Proposed Title I, Section 6323(a)(2)(B) would protect the surety, to the extent of his priority under state law, if he holds security indemnifying him against loss or liability the incurring of which is beyond his control when the federal tax lien is filed.

In the mechanic's lien area sureties face another serious problem. In *United States* v. *Kings County Iron Works* it was held that a mechanic's lien claimant could not prevail against a federal tax lien which had become effective against the general contractor. This

was because the mechanic's lien had not been reduced to judgment and thus failed to meet the test of "choateness". The same reasoning will deprive the general contractor of his mechanic's lien right where the tax lien runs against the owner. Where the tax lien runs against the owner, subcontractors and suppliers of material will likewise be subordinated to the Federal tax lien. This results from application of the doctrine of "choateness".

Proposed Title I, Section 6323(o)(5) would give priority to mechanic's lienors to the contract proceeds, over even pre-existing federal tax liens filed against the defaulting contractor. As to the property itself, proposed Section 6323(c) would give the mechanic's lienor priority over the federal tax lien if, under state law, the mechanic's lien became effective as of a date prior to filing of the federal tax lien. This would strengthen a surety's position as assignee or subrogee of mechanic lienors.

A different problem is presented by withholding taxes payable in connection with a construction contract. The withholding taxes are in theory a part of the laborer's wages. The laborer by law gets full credit to his income taxes whether or not these amounts are ever paid to the Government. The Government is then, in a sense, providing a part of the wages. Its claim for these taxes is not protected by state law nor does it have any claim against the surety in the normal course. Since the Government tax lien does not arise until assessment and, unlike a mechanic's lien, does not relate back, normal priorities do not provide an equitable solution.

Proposed Title I, Section 6323(i) would give priority, with respect to liens for withholding taxes on wages earned on a project, over mechanic lienors and sureties with respect to both the property and the contract proceeds.

Problems of Contract Purchasers

Section 6323, I.R.C., provides that a federal tax lien is invalid against a "purchaser" until the lien is recorded. It does not define who is a "purchaser" or when a person attains that status. The Supreme Court has said a purchaser within the meaning of the statute "usually means one who acquires title for a valuable consideration in the manner of vendor and vendee". *(United States* v. *Scovil.)* This implies that there must have been a completed transaction in which title has been conveyed and the full purchase price has been paid, all before the federal tax lien is recorded against the vendor.

In many purchases and sales of property conveyance of title and full payment of the purchase price are deferred. Many purchases of

homes and other property are made under contracts calling for payments in installments over a period of time before the purchaser is entitled to a deed or other instrument conveying the seller's title. During this period, a federal tax lien may be recorded against the seller without the knowledge of the purchaser. In *Leipert* v. *R. C. Williams and Co.,* a district court in New York held that when a federal tax lien is recorded before passage of title, the Government prevails as against the installment purchaser, having both a prior claim on the seller's title and also priority over the purchaser's rights to recover the payments he had made to the seller.

This result is extremely harsh on families of limited means who desire and need homes but do not have sufficient cash resources to immediately acquire title to a home in the purchase arrangement. Such people ordinarily must make small monthly payments over an extended period of time. It is ridiculous to require that they either personally check the county records or pay to have someone check for federal tax liens against their vendor before making each monthly payment.

Surely it is in the public interest that families be encouraged to acquire their own homes, which in turn benefits the construction industry and affects the prosperity of the country generally. To correct this situation, proposed Title I, Section 6323(b) and 6223(p)(2), would afford a contract purchaser the same protection at the date of his contract as a purchaser with title now enjoys against subsequently recorded federal tax liens. Such a contract purchaser would be required to search for federal tax liens only at the date of his contract. The Government could still pursue all other assets of the seller and the seller's interest in the property subject to the rights of the purchaser.

Problems of Landlords

In many states landlords are given a statutory lien on the tenant's fixtures and chattels on the premises, to secure the rent. Since the rent debt is constantly shifting forward, and there may be substitutions in the property securing the debt, the landlord's lien is regarded by the Supreme Court as "inchoate", at least until it is enforced by distraint or judgment, and even after distraint if the possibility of redeeming the property by giving bond remains open. *(United States* v. *Scovil; United States* v. *Waddill, Holland & Flinn.)* The Supreme Court's extension of the "choateness" test to contractual security *(United States* v. *Ball Construction Co.)* casts doubt also on the security of a "chattel mortgage clause" in a lease, and even of a deposit to secure future rent.

Since landlords' liens, whether statutory or contractual, are security in reliance on which credit is extended, the Committee felt that relief from such decisions should be recommended. In the case of rent already accrued when the federal tax lien is filed, that protection would be unconditional. Security for future rent, on the other hand, is similar to security for other future extensions of credit, on the priority of which reasonable conditions are proposed to be imposed (as discussed above under Problems of Mortgagees). Therefore, except in the case of a deposit, the priority both of a contractual and of a statutory lien for rent accruing after a federal tax lien is on file, would be limited to rent for three months (one year in the case of a farm lease). The landlord can protect himself by searching for tax liens at three month intervals if he wished to allow rent to become delinquent for a longer period. See proposed Title I, Section 6323(e).

Problems of Attachment, Garnishment and Judgment Creditors

a. *Attachment and Garnishment Liens.* Under state law, an attachment or garnishment lien gives the plaintiff rights in specific property to the exclusion of subsequent creditors and other subsequent lienors. If the attachment or garnishment proceeding is in anticipation of securing a judgment, the lien of the judgment, when obtained, will relate back to the date the attachment or garnishment lien became effective, and be superior to intervening creditors or lienors. The present federal lien law protects neither a garnishment lien nor an attachment lien against federal tax liens. As a result, the Supreme Court has held that a federal tax lien is entitled to priority over earlier attachment and garnishment liens not perfected by entry of judgment at the time the federal tax lien was filed. There are two grounds for the decision: First, the attachment or garnishment liens are inchoate as to amount until reduced to judgment. (It might be noted that in the same sense, the tax lien usually also is "inchoate" at the time of assessment; ordinarily at that time it has not been finally determined that the taxpayer owes all or any part of the assessed tax.) Second, the state law doctrine of relating the judgment lien back to the earlier date will not be recognized or permitted to operate so as to cut out an intervening federal tax lien. *(United States* v. *Acri; United States* v. *Liverpool & London Ins. Co.)* Thus, these remedial liens are ineffective against the federal lien even though valid against spcific property under state law.

Since the creditors who acquire attachment or garnishment liens seldom if ever have extended credit in reliance upon the security of the specific property subject to the attachment or garnishment lien,

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their equitable position *vis-a-vis* the Federal Government's claims is not truly comparable to the equitable position of contract lienors and lienors who rely upon statutory liens in extending credit. Accordingly, the Committee has not made any special provision for priority of attachment and garnishment liens in its recommended draft legislation.

b. *Judgments.* Section 6323, I.R.C., protects a judgment creditor against unrecorded federal tax liens. However, it does not define who is a judgment creditor or when a person attains that status. The Supreme Court has said "we think Congress used the words 'judgment creditor' * * * in the usual conventional sense of a judgment of a court of record." *(United States* v. *Gilbert Associates.)*

Treasury Regulations Sections 301.6323(a)(2)(b) state an additional requirement, that a person holding a money judgment must have "a perfected lien under such judgment on the property involved." This is an attempt to draw an analogy to the requirement of a "perfected" lien in insolvency cases which has been described as requiring "a final assertion or attachment of rights to specific property, as is, for example, the enforcement of a judgment by execution and levy." *(Illinois* v. *Campbell.)* This position, taken by the Government in litigated cases, would seem to require a levy on specific property and possibly actual seizure before the effectiveness of "a judgment of a court of record" is recognized even though the federal lien itself is merely a general lien on all property of the taxpayer, without any levy or actual seizure.

The law of the various States usually makes a judgment a general lien on all real estate of the judgment debtor from the time of entry, docketing or recording a court judgment in the county, while in the case of personal property many states require an actual levy or seizure under the judgment to perfect a judgment lien. The Government's refusal to recognize this distinction forces a judgment creditor to promptly levy and seize specific property. This may work to the disadvantage of both the judgment creditor and the judgment debtor who are desirous of satisfying the judgment debt in an orderly manner.

Proposed Title I, Section 6323(d), in conjunction with Section 6323(p)(6) (defining when a lien becomes "effective"), would date the priority of a judgment lien from the time (no earlier than the rendition of the judgment) as of which state law makes the judgment lien effective against third parties acquiring liens. If state law makes the judgment a lien prior to seizure, seizure would not be necessary to its priority over a federal tax lien filed after the

judgment has been rendered and has become a lien under state law. Compare Title 28, U.S. Code Section 1962, which conforms the rules for the priority of federal court judgments to those governing judgments of state courts.

Problems of Attorney Liens

Assuming that an attorney has a lien (by contract or by state law) upon his taxpayer-client's cause of action or upon the recovery, the existing cases tend to be unfavorable if the Government asserts a priority for its tax lien. *(United States* v. *Goldstein.)* Compare *Martiney* v. *U.S.* where the attorneys were held to be purchasers of an interest in a future judgment and prevailed under Section 6323(a) I.R.C. because notice of the tax lien was not filed in the county of the taxpayer's domicile). Most of the cases favoring the Government deal with attorney's liens on causes of action involving contracts or property. Some have suggested that where causes of action for personal injury are non-assignable prior to judgment, they may not be subject to the federal tax lien.

Proposed Title I, Section 6323(o)(8) provides that the lien of an attorney for reasonable compensation and expenses, if the lien is valid under state law, shall come ahead of a federal tax lien upon the same cause of action or recovery. This would be true, even if notice of the federal tax lien were on file at the time when the attorney acquires his lien; and, *a fortiori,* if the federal tax lien is filed after the attorney's lien attaches. The same rule would be extended to others, such as doctors and hospitals. The proposal is based upon the same policy as that giving priority in bankruptcy to the expenses of recovering assets for the bankrupt estate.

Problems of State and Local Tax Liens

The federal tax lien arises when the tax is assessed; and it is deemed to be choate at that time for purposes of determining priority over tax liens in favor of States, counties, cities and other non-federal taxing units. *United States* v. *City of New Britain.*

Since the Supreme Court holds that priority between choate liens is based upon the common-law rule, "first in time is first in right", it is important to determine when non-federal tax liens become choate.

So far as real property taxes are concerned, the requirements apparently are that the amount of the tax be determined and that it be a lien upon specifically identified realty.

However, at least in insolvency cases, in the case of personal property taxes, the Supreme Court holds that the tax is still inchoate

until there has been a tax sale and the delinquent taxpayer has been deprived of both title and possession. *United States* v. *Gilbert Associates.*

Proposed Title I, Section 6323(f) would adopt the same requirements for state and local taxes as for federal taxes, namely, that the amount of asserted tax be fixed by the taxing authority, and that the tax become a lien either upon specific property or upon the taxpayer's property in general. In addition, it proposes to give liens for subsequent real property taxes a "super-priority", conforming to that which they enjoy under most state laws. That is, the United States would consent to the subordination of its tax lien to subsequent liens for state or local taxes on the liened property, imposed on account of the services rendered by state and local governments to the property itself and to its private occupants, just as the United States has consented to the taxation of property (in private use) which it acquires by foreclosure of insured mortgages. Consent would also be given to the priority of special assessments for local improvements, etc., which presumptively benefit the property and enhance the value of the liens thereon. Proposed Title I, Section 6323(o)(11) and (12).

"Circular Priority"

As indicated above in this Report, in several cases it has been held under present law that state taxes accruing subsequent to a federal lien are subordinate to the federal claims *(New Britain, Exchange Bank & Trust Company).* By state law the state and municipal taxes were entitled to priority even over a prior mortgage, but the prior mortgage was superior to the federal tax lien. This results in "circular priority". The amount of state or local taxes was taken out of the mortgagee's recovery.

For example, suppose property is subject to the following liens:

$20,000—Federal tax lien.

$10,000—Mortgage recorded before notice of the tax lien was filed.

$ 2,000—Lien for property taxes which were assessed after the federal taxes, but which have priority over the mortgage under state law.

$ 8,000—Mechanic's lien, which under state law ranks behind the property tax lien, but ahead of the mortgage (because work was started before the mortgage was recorded).

Under present law, relative priorities of these four liens are:

(a) The federal tax lien is *junior* to the mortgage but has *priority* over the property tax lien and the mechanic's lien under the "inchoate" doctrine.

(b) The mortgage is *junior* to the property tax lien and the mechanic's lien but has *priority* over the federal tax lien.

(c) The property tax lien is *junior* to the federal tax lien but has *priority* over the mechanic's lien and the mortgage.

(d) The mechanic's lien is *junior* to the federal tax lien and the property tax lien but has *priority* over the mortgage.

Thus, each of the four is junior to at least one of the other three and at the same time has priority over at least one of the others.

The four claims total $40,000. Suppose the property sells for only $15,000. Under the circular priority rule established by the Supreme Court in *New Britain,* $5,000 goes to the federal tax lien; and $10,000 is left for the other three; under state priority rules, $2,000 goes to the property tax, $8,000 goes to the mechanic, and nothing is left for the mortgage.

This result seems bizarre because—

(1) the property tax lien and the mechanic's lien would have been wiped out by the $20,000 federal tax lien, which would have appropriated the entire $15,000 proceeds, were it not for the adventitious circumstance that there was a mortgage;

(2) the mortgage saved the day for the property tax lien and the mechanic, but gets nothing, although $5,000 went to the federal tax lien which is junior to the mortgage.

Of course, different results will follow as a result of assuming different relative amounts for the various claims and for the proceeds; but the results are always comparably bizarre.

However, these results might possibly be avoided under current law where the mortgagee has advanced the money to pay the taxes and seeks to add the taxes advanced to his mortgage debt, even though those taxes accrued subsequent to the filing of the federal tax lien and are junior to such lien. In the only case giving any extended discussion to this problem, these subsequently accruing taxes, as well as insurance premiums, were allowed on the basis of state law *(Rikoon Real Estate* v. *Two Boro Dress, Inc.* But see *United States* v. *Lord).* There are bankruptcy cases that hold interest and attor-

neys' fees are properly considered part of the mortgage debt *(United States* v. *Sampsell; Security Mortgage Co.* v. *Powers).* Perhaps the same reasoning could lead to the allowance of state and municipal taxes and insurance premiums (which have been paid by the mortgagee) as part of the mortgage debt and thus avoid circular priority.

We understand that the rule of the *New Britain* case, as applied to state and local real property tax priorities, has caused the Government itself some administrative difficulty. In an effort to hold down the number of mortgage foreclosure suits in which it must participate, the Government has sought to encourage the use of the procedure for administrative discharge of the federal tax lien by voluntary payment to it of the value (if any) of the Government's interest in the property. (Section 6325(b)(2), I.R.C.) However, while this procedure will remove the federal tax lien from the property, it has no effect on existing state and local property tax liens on the property. Only by court foreclosure are such liens cut off. Even where such liens are junior to the federal tax lien (because assessed after the federal tax lien arose), an administrative discharge of the federal tax lien operates simply to move the property taxes forward in priority. This fact may operate, as a practical matter, to reduce the amount of money which the Government can get to discharge its tax lien, because a prospective purchaser of the property, in determining how much he soundly can pay for such a discharge, must take into account the state and local taxes which are subordinate to the federal tax lien but which will become a first and prior lien under state law if the federal tax lien is removed from the property. Recognizing this fact, at least some offices of the Internal Revenue Service, in computing the amount which will be accepted for a discharge of a federal tax lien, have taken the practical view and made allowance for the superiority of state and local property taxes which would result upon discharge of the federal tax lien, where the circumstances did not seem to warrant litigation.

The proposed recognition, by statute, of the "super-priority" of real property taxes (as discussed under the preceding heading) would confirm and make general that administrative practice, and would eliminate the most common cause of "circular priority". If that proposal is enacted, a "straight line" priority would result, with the property taxes first satisfied (where state law so provides), and the prior mortgage next fully satisfied, both before the federal tax lien.

Other situations giving rise to "circular priority" would be minimized by the adoption of the proposals. Mechanics' liens would no longer be subordinate to later federal tax liens but would take

priority as of the time when they have priority under state law, thus eliminating that "circular priority" situation (except where state law gives mechanic lienors a "super-priority" over liens on the property antedating the work; since the draft legislation does not recognize such "super-priority," circuity might still arise in such cases). The same is true with respect to other liens to the extent that state law priorities are proposed to be recognized.

In those instances where (principally because of denial of recognition of a state law priority or "super priority") circuity might still arise, the Committee recommends that the *New Britain* rule be confirmed by statute. (Proposed Title I, Section 6323 (m)(2)). Although the result of its application is not equitable to the mortgagee or other private lienor who is "squeezed", the alternative is just as unsatisfactory and doubtless would not be approved by the Congress. The alternative to the *New Britain* rule would be to recognize the priority over the federal tax lien of any lien which, by state law, is superior to a lien which, in turn, the Congress has accorded priority over the federal tax lien. That alternative would enable the States, by the simple expedient of preferring selected liens over liens which Congress has given priority over the federal tax lien, to give such preferred liens a priority which Congress has not seen fit to grant directly and did not intend they should enjoy.

Maritime Liens and Ship Mortgages

The Government has been urging federal tax lien cases as authorities in the field of maritime liens (which includes preferred ship mortgages). A recent case in the field of maritime liens therefore warrants comment. In *United States* v. *Flood,* the First Circuit held that maritime liens are governed by the customary rules of admiralty as to priority and are not subject to the rules granting priority to a federal tax lien in competition with other liens on real and personal property. Maritime law, in general, permits maritime liens to rank in inverse order of chronological priority; thus the latest claim gets the highest priority. But non-maritime liens, although prior in time, rank after all maritime liens. In the *Flood* case an earlier federal tax lien against a ship was held inferior to a subsequent repairman's lien.

The Committee's recommendations would make no changes under this category. See proposed Title I, Section 6323(o)(7).

Constructive Trusts

When money or other property is taken from a person by unlawful or tortious means, a "constructive trust" may be imposed on such money or property if it can be traced. Since that is a mere equitable interest, subject to be defeated by a bona fide purchaser, and subject to the hazards of litigation, it is probable that such a constructive trust is too "inchoate" to prevail over a subsequent federal tax lien under present rules. Equity seems to require that the wrongdoer's federal taxes should not be collectible from property which he has wrongfully taken from another, at least where such property can be traced. Proposed Title I, Section 6323(o)(10) would provide that a constructive trust, where tracing is possible, prevails even over tax liens against the wrongdoer.

Forfeitures Under State Laws

Frequently, state laws treat as contraband, subject to seizure and forfeiture, the instruments and proceeds of criminal activity. When an arrest occurs, accompanied by such a seizure, the Director may hasten to assess taxes with respect to the illegal activity. The Government has taken the position that the State's interest, after seizure but before judgment of forfeiture, is "inchoate" and subordinate to the lien of the later federal tax assessment, but that view was rejected in *United States* v. *Bleasby*. There seems to be no strong equitable basis upon which to resolve the problem, unless it is that the governmental unit that assumed the burden of enforcement should enjoy the fruits thereof. Since the problem does not concern private liens and arises out of law enforcement activities of state, local and federal authorities, the Committee concluded that it was beyond the proper scope of its function to recommend a legislative solution on this matter.

Miscellaneous Statutory Liens

All of the liens heretofore discussed are either universal or quite widespread. A number of other common liens are also dealt with in the draft legislation (see particularly Title I, Section 6323(o)(6), relating to liens for work on and care of personal property, innkeepers' liens, breeders' liens, and liens for damage done by an animal, vehicle or vessel). Other liens are unique in particular States, reflecting in large part the political strength of the groups in whose favor the liens are created. It was the conclusion of the Committee that the preference of private liens over the Government, based on the relative equities, should be determined, so far as possible, on a

nationally uniform basis, rather than, for example, favoring musicians, bookkeepers and hotel employees in Florida (where they have special liens) while denying a like preference elsewhere.

Many so-called "liens" are the type of floating lien that attaches only to property retained by the taxpayer, and are more in the nature of rules of priority than of ownership. In general, holders of such "liens" would have no equitable claim to preference over federal taxes.

It is possible, of course, that in attempting to enumerate and deal with the liens which are widely recognized and have sufficient equity to merit recognition in preference to federal tax claims, the Committee has failed to cover some type of universally recognized lien which merits specific coverage. If so, it can be judged on its merits when it is brought to the attention of the Congress.

Federal Tax Lien Filing Problems

a. *Effect of Unfiled Lien.* As against mortgagees, pledgees, purchasers and judgment creditors, the general federal tax lien is not valid until notice thereof is filed in the prescribed office. Internal Revenue Code § 6323. But as against all others, the lien exists, without filing, as a secret lien. The lien arises upon the neglect or refusal of the taxpayer to pay a tax after demand, but it then relates back to the time of the assessment (I.R.C. §§ 6321-6322), which is an internal administrative act of which even the taxpayer may be unaware at the time. The secrecy of the lien is fortified by the rigid rules against disclosure of information concerning a person's tax liability (I.R.C. § 7213), which rules are relaxed only in the case of taxes with respect to which notice of lien has been filed. I.R.C. § 6323(d).

It is understood that, under normal procedure, the District Director files notices of lien in all cases of delinquency, unless the taxpayer submits and carries out a satisfactory program of payments. Since the filing of a lien may impair or destroy the taxpayer's credit, the Director's refraining from filing serves both as an accommodation to the cooperative taxpayer, giving him a chance to get back on his feet, and a powerful inducement to the taxpayer to cooperate and to keep up his agreed payments. The present rule under which filing is not mandatory is defended, therefore, as avoiding the necessity of driving to the wall the taxpayer who is honestly endeavoring to work off his delinquencies. The rule is attacked, on the other hand, on the ground that the secrecy of the lien entraps creditors into extending unsecured credit to the taxpayer, who is carrying on his business, in effect, for the account of the Government, which, if the

situation worsens, can at any moment secure a priority over such creditors by filing its lien. Therefore, the proposal has frequently been advanced that the federal tax lien should arise only when notice is filed, rather than when the tax is assessed.

The Committee gave extensive consideration to the alternatives and concluded that filing of notice of the lien should not be made essential to its existence, since such a provision would give an unwarranted preference to donees from the taxpayer and to "non-reliance" creditors (*e.g.*, state and local tax claims and attachment and garnishment creditors). While there are equities in favor of those who extend unsecured credit to the taxpayer in ignorance of secret federal tax liens against him, it is not clear that they would be helped materially by the proposal to make the existence of the lien dependent on filing; for the Government might still refrain from filing for a period and yet remain in a position to obtain priority over unsecured creditors before they could secure judgments if the taxpayer's situation became worse.

Moreover, making filing of notice of the lien prerequisite to its existence might seriously alter the present practice of forebearance to file against a temporarily embarrassed but cooperative taxpayer. Most lawyers are familiar with the tremendous adverse and semi-permanent impact which the filing of a federal tax lien has on a man's credit and financial standing. If filing were a prerequisite to effectiveness of the lien, filing might be expected in many more cases.

Therefore, the Committee decided to recommend no change in the present rule under which filing of notice of the federal tax lien is necessary only against purchasers and certain "reliance" creditors. However, the present protected classes would be very substantially expanded so as to include *all* contractual security devices (whether or not technically mortgages or pledges), contract purchasers, optionees, lessees, mechanic lienors and landlords having liens.

b. *Expiration of lien.* A further problem related to lien-filing arises from the fact that, although the normal period of limitations for collecting a tax assessment is six years, that time may be extended by agreement, or by the commencement of suit to collect the tax, or in certain circumstances by military service. The lien remains valid as long as the tax is legally enforceable. I.R.C. § 6322. Thus, it cannot safely be assumed by a person searching the record that a lien more than six years old has expired. The law permits a release of lien to be issued when it is ascertained that the tax has become unenforceable by lapse of time (I.R.C. § 6325(a)(1)); but the Director does not take the initiative to clear the title by filing such a release. Accordingly, it is proposed in Title I, Section 6323(k)(4)

that the effectiveness of the filing of a tax lien terminate six years after the assessment date, unless the Director files a notice extending its effect.

c. *Office for Filing Lien.* The place for filing the tax lien is "the office" designated by the law of the State, whenever the State has by law designated "an office" for such filing. If no office is thus designated, the lien is to be filed in the federal court. I.R.C. § 6323(a). The States have all passed conforming legislation, under which it is usually required that federal tax liens be filed in the particular county (or smaller unit) where property is situated. Some go further and prescribe different offices where liens must be filed in order to reach realty or personalty, in conformity with their local systems for filing realty and chattel mortgages. Those state rules have been accepted for many years as complying with the federal statute. To clarify and confirm the present understanding that the State need not specify one centralized office for filing all federal tax liens in the State, it is proposed, in Title I, Section 6323(k)(1), to substitute "office or offices" for the word "office" found in Section 6323(a), I.R.C.

d. *Situs for Filing of Lien.* Section 6323(a), I.R.C., requires filing of notice of the federal tax lien in the office designated by the State where the property is "situated" (or, in certain circumstances, in the federal district court). Many state laws are no more specific, but merely require filing in the county where the property is "situated", while others, such as the New York law, go into great detail concerning the place for filing. The "situs" of property for this purpose should not be left in uncertainty, both because the Director must know where to file in order to protect the revenue, and because a person acquiring an interest in property must know where to search for liens.

Present law seems to result in a dual federal-state standard of interpretation of where property is "situated" for this purpose. The "situs" of the property within the State must be established, as a matter of federal law, before the State has power to prescribe the office for filing notice of a lien on such property. But, once the property is within the State's jurisdiction, state law determines in what office the lien shall be filed. Conceivably, an entirely different standard of "situs" could be applied for each purpose. This situation is not necessarily objectionable—a federal standard necessarily controls the question of which state law Congress has consented to submit to, with respect to particular property; but then the State is free to conform the rules, with respect to property under its juris-

diction, to the normal practices with respect to searching titles to each class of property. The vital thing needed, however, is certainty.

In the case of real property, the situs is clearly at its physical location. But it is unclear under present decisions whether tangible personal property is "situated" at the domicile of the owner or at its physical location. Likewise, it is unclear whether intangibles are "situated" at the domicile of the creditor, the domicile of the debtor, or (in special cases) the physical location of a document or fund or the place of performance of a contract. Analogies drawn from other fields of law have served only to confuse the issue.

In Title I, Section 6323(k)(3), it is proposed to lay down certain express rules concerning the situs of property for filing purposes. Physical location would control for real and tangible personal property (except property having no regular location), the home port would be the situs of a vessel registered under federal law, and residence of the taxpayer would control in other cases. However, rather than upset normal patterns of searching for interests in chattels, the proposal would permit a State (in the case of chattels situated within the State within the meaning of those rules) to make the residence of the taxpayer the place for filing. The proposal also defines the residence of a corporation or partnership as the location of its principal executive office.

A further problem arises if property is removed from the jurisdiction where the lien is filed, or (where residence is the test) if the taxpayer himself moves away. At present, a tax lien once validly filed continues to attach to property long after the taxpayer and his property are established in another State or county, thus imposing serious burdens on persons dealing with him, who may not be readily able to learn the prior history. It seems not unreasonable to require the Director to keep a periodic check on the moves of taxpayers against whom he refrains from enforcement action, and to re-file the lien in a new jurisdiction if the lien is to be effective more than one year after removal from the jurisdiction where the lien was filed. Proposed Title I, Section 6323(k)(4) so provides.

e. *Filing Against Specific Property.* The federal tax lien is a general lien on all the property of the taxpayer, known or unknown to the Director. The requirement that it be filed in the county (or other political unit) where property is situated narrows the lien somewhat, but it remains a general lien on all the property of the taxpayer within such political unit. Filing against the name of the taxpayer is the only system consistent with such a lien; to go further and require filing against described property, or in a special office with respect to particular kinds of property, converts the lien,

in effect, into a specific lien on items of property which the Director must search out and identify.

The general character of the federal tax lien conflicts with the system of real property titles in some states (notably those using the so-called Torrens System of title registration, and a few others), where the search of titles is based on the particular parcel of land rather than on the names of its successive owners. Congress has made it very clear, however, in enacting I.R.C. § 6323(b) in 1954, that it does not mean to have the revenue subjected to such requirements. It is doubtful that an accommodation can be devised which will satisfy all affected parties. No amendment in this regard is proposed.

A somewhat similar problem involves federal tax liens on automobiles. Because of their mobility, a lien filed in one county may not give adequate notice to persons who may buy or encumber the vehicle in a distant jurisdiction. Furthermore, where motor vehicle title registration laws are in force, purchasers customarily rely on the title certificate without searching for liens in county records at the legal "situs" of the vehicle. It has been suggested, therefore, that Congress consent that the States require filing federal tax liens against motor vehicles in a central office in the State of registration. Since the Director reasonably may assume that most taxpayers will own automobiles, it would be no particular burden to require that he send a duplicate notice of lien to the motor vehicle office; but a requirement that he obtain possession of the title certificate or even describe the vehicle would impose burdens that Congress would probably not tolerate. The committee is very doubtful that such central filing, without notation on the title certificate, would be of any real benefit to third parties. Therefore, no recommendation is made on this matter.

Congress itself provides for the recording of conveyances of and mortgages upon certain highly mobile property—vessels, railroad rolling stock, and aircraft. 46 U.S.C. §§ 921, 1012; 49 U.S.C. §§ 20c, 523. Some district courts have considered some of those laws applicable to federal tax liens on such classes of property. Since the laws referred to require specific description of the property, they are inappropriate for application to federal tax liens. But consideration should be given to the possible need for central filing of federal tax liens against such property, and the means by which it can be required without undue burden on tax administration; or, if the need is not apparent, the laws should make clear that they are not applicable to federal tax liens. Time did not permit the Committee to give adequate study to this matter. Therefore, it is merely suggested as a subject which may merit consideration by the Congress.

f. *Record-search Problems.* The Committee received, too late for adequate study, a suggestion that a filed notice of federal tax lien be effective with respect to real estate "only if a customary title investigation of the property would reveal the name of a person named in such notice" of tax lien. The suggestion is directed at situations where property of a taxpayer, subject to tax lien, is held in the name of a nominee, and the true ownership is not known to a person who acquires an interest from the nominee. In *United States* v. *Haddock,* however, a district court protected the acquiring party, and the Committee was not able, in the time available, to ascertain whether the administrative practice in this matter has been such as to create a real problem. If the matter is deemed important, it is suggested that the above quoted language of the suggested remedial provision should be reconsidered in the light of its possible effect on the validity of a filed lien in States where "customary title investigations" are made against the parcel of property and not against the name of the party.

The same source also suggested that a filed notice of lien should be effective with respect to personalty only where the person acquiring a lien or interest therein acquires it "directly from a person named in such notice, or from a successor in interest in a manner disclosing the name of such person." The Committee believes that most of the problems contemplated by the suggestion will be more effectively eliminated by its proposed Section 6323(o)(1), Title I, relieving customers of a dealer from federal tax liens on property bought in the ordinary course of his business. Problems may still exist, where personal property is sold and re-sold without passing through a dealer, but the second purchaser's difficulty in tracing the chain of ownership in order to search for liens would be matched by the tax collector's problem of tracing the property to him. The Committee concluded that the situation was unlikely to arise often enough to merit special treatment.

g. *Effect of Knowledge of Unfiled Lien.* One of the serious unsettled questions is whether a purchaser or encumbrancer who knows of a tax lien on the taxpayer's property is bound thereby, even though the Director has not seen fit to file notice.

To provide, as a general proposition, that such knowledge shall have the same effect as filing seems undesirable. When the Director refrains from filing a lien, it presumably signifies that he intends to permit the taxpayer to carry on normally in an effort to work off his tax liabilities. If third parties were unable to extend secured credit to him or to purchase property from him when they know of his tax difficulties, that purpose would be defeated. When the Di-

rector wants to prevent such transactions, the remedy (by filing) is in his hands.

On the other hand, there are certain situations where it seems the person with knowledge of an unfiled lien should be bound. If he participates with the taxpayer in a scheme to turn the taxpayer's property into spendable, concealable cash, in order to defeat collection of a known tax, he should be subordinated to the lien even though he gave value; but mere knowledge, without bad faith, should not subordinate one who gave value. Where there is no consideration given other than an antecedent debt, knowledge alone should be enough to bind the third party, since he should not be permitted to improve his position at the expense of a known federal tax lien.

To the extent that a purchase or encumbrance is invalidated against an unfiled lien, certain technical difficulties must be met. One relates to the protection of the innocent transferee of the purchased property or assignee of the mortgage. He will be unable to tell from the record that the title is deficient because of bad faith or knowledge of the purchaser or mortgage; so far as appears, his transferor holds under an instrument antedating the filing of the notice of tax lien.

The other problem relates to solution of the "circular priority" problem that will result if, for example, a first mortgage is placed on the property in bad faith (or for an antecedent debt when the tax lien is known), and is invalidated against the unfiled federal lien, but there is a bona fide second mortgage or a subsequent bona fide purchaser. The second mortgagee or purchaser is then behind the first mortgage, who is behind the federal tax, which is subordinate to the second mortgagee or purchaser.

Proposed Section 6323(*l*) and (m) attempt to deal with the foregoing problems, by subordinating the bad faith transferee or encumbrancer but protecting the innocent third party.

Federal Estate and Gift Tax Liens

Problems created by the general federal tax lien are all equally present in the case of the special estate tax lien and the special gift tax lien. Each of these special liens creates additional problems, particularly for title examiners.

The special estate tax lien is imposed by Section 6324(a)(1) of the Internal Revenue Code. Unless the estate tax is paid in full the tax is a lien for ten years upon the gross estate of the decedent. This lien arises at the date of death without any necessity for recording or filing. *Detroit Bank* v. *United States.* The lien applies not only to the probate property held by the decendent's representative but also to property transferred by the decendent inter vivos which

becomes a part of the gross estate. Thus the lien is a secret unrecorded lien not only upon property which the decedent owned or in which he had an interest at his death but also upon property which the decedent may have transferred many years prior to his death. In fact it also applies to property transferred by others in which the decedent was given a general power of appointment or in which the decedent had a joint interest.

The statute provides that the lien shall exist for a period of ten years after the decedent's death. There is considerable doubt that this language need be taken literally for the lien probably cannot be enforced in any manner after running of the statute of limitations prescribed for assessment and collection of the estate tax, *i.e.,* normally three years from the due date for assessment of the tax and six years from an assessment for a collection proceeding.

Divestment of the estate tax lien is treated differently for probate property and property included in the gross estate under Sections 2034 through 2042 of the Code. In the case of probate property, the lien is divested to the extent that the property or its proceeds is used for the payment of charges against the estate and of administration expenses allowed by the probate court. It should be noted that this exception will not be applicable after *assessment* of the estate tax since the general tax lien will then arise. *United States* v. *Security-First National Bank.* Probate property is also divested of the lien *after discharge* of the executor or administrator from personal liability under Section 2204 upon its transfer to a "bona fide purchaser, mortgagee or pledgee for an adequate and full consideration in money or money's worth." Section 6324(a)(1). Non-probate property will be at any time divested of the lien upon its transfer to a bona fide purchaser, mortgagee or pledgee for full consideration but the lien then attaches to all the property of the transferor, except that the transferor's property may also be transferred free of the lien to a bona fide purchaser, mortgagee or pledgee.

The gift tax lien is set forth in Section 6324(b),I.R.C. and is a lien upon the donated property for ten years from the date of any gift made. It applies even though the donated property may have been less than the annual exclusion, and apparently even though it may have been given to a charity. The property is divested of the lien if it is transferred by the donee to a bona fide purchaser, mortgagee or pledgee for a full consideration, but the lien attaches to all property, *including after-acquired property,* of the donee to the extent of the value of the gift except any of the donee's property which may also be transferred to a bona fide purchaser, mortgagee or pledgee. As in the case of the estate tax lien it likewise seems highly

unlikely that the gift tax lien can be enforced after assessment of the tax is barred or the collection of an assessed tax is barred.

An exception is provided by Section 6324(c) to both liens with respect to a mortgagee, pledgee or purchaser of any "security" if such a transferee had no "notice or knowledge of the existence" of the lien at the time of the transfer.

This exception, which was added by the Internal Revenue Code of 1954, may indicate that there is a distinction between a "bona fide" purchaser and a purchaser "without notice" of the lien. The possibility of a distinction might leave a transferee of property other than a "security" in a doubtful status if he has no actual notice of a lien but should have realized from known facts, or facts that he should have known, of the possible existence of a lien. However, the Internal Revenue Service has stated that a "bona fide purchaser" is one "who, in acquiring the particular property, deals at arm's length, as between strangers, and pays a full and adequate consideration in money or money's worth. This conclusion is not affected by the fact that a purchaser, mortgagee or pledgee of property from a surviving tenant is presumed to have knowledge of the estate tax lien by reason of the recital of death of a joint tenant in the chain of title." Rev. Rul. 56-144.

The estate tax lien and the gift tax lien create special problems for the title examiner. Since these liens are secret unrecorded liens a title examiner can never be certain they do not exist. If the property had last been transferred over ten years ago, the gift tax lien cannot be in existence, but the estate tax lien could be if the property had been transferred inter vivos in such a manner as to be includable in the gross estate of a decedent dying within ten years. Of course if the acquiring party is satisfied that he will fall within the category of a "bona fide purchaser, mortgagee, or pledgee" for full consideration the property will be divested of any estate or gift tax lien (except as to probate property acquired before the executor's discharge from personal liability). This is hardly a field for confidence. Thus the title examiner and counsel are called upon to assess the factual possibilities and to give an opinion on the legal infirmities. A decision must then be made based upon the practical risks involved.

If evidence indicates that an estate tax or gift tax lien may be present there exists a procedure under Section 6325 for obtaining the release of the lien. While it is customary to obtain such a release upon real and tangible personal property purchased from an executor, the acquiring person may well not be aware of the existence of the lien as to property comprising a part of the gross estate but not the probate estate. He will then be protected only if he is a

"bona fide" purchaser, mortgagee or pledgee. It is not customary to obtain a release for securities sold since those transactions are usually handled through brokers, and the purchaser will therefore normally have no "notice or knowledge" of the lien.

The special problems raised by estate and gift tax liens need special study with a view to determining whether the Government needs the extent of the protection which the liens presently provide. It is entirely possible that the Government's protection is unnecessarily broad and unnecessarily prejudical to third parties and disturbing to titles in light of the fact that the Government has other remedies available for collection of the estate and the gift tax. For instance, personal liability is imposed upon the transferee or fiduciary with respect to property received from the decedent (Section 6324 (a)(2)). Personal liability is also imposed upon executors and others (Section 3467 of the Revised Statutes (31 U.S.C. Section 192)). Personal liability is also imposed upon both the donor and the donee of any gift. And, of course, transferee liability can be enforced under Section 6901 against transferees liable for the tax at law or in equity. It seems to be generally true that the estate tax lien and particularly the gift tax lien is very seldom utilized for the collection of these taxes.

The absence of much litigation with respect to these liens contrasts noticeably with the abundance of litigation under the general tax lien. This is evidence of the possibility that the Government may well be able to give up much of the protection which it has theoretically obtained by the creation and existence of these liens in aid of greater certainty for property interests.

The Committee has limited its recommendation principally to proposals conforming the priorities as against the estate or gift tax lien to those proposed to be provided with respect to the general tax lien. It is also proposed to be made clear that the special estate tax lien and the gift tax lien expire when the statute of limitations bars assessment or collection of the estate or gift tax which gave rise to them. See proposed Title I, Section 6324, and Technical Explanation related thereto. The broader questions above mentioned are commended to the attention of the interested Sections.

Federal Liens Other Than Tax Liens

Problems comparable to those above discussed, with reference to the priorities of federal tax liens, may also arise in connection with federal mortgages and liens for other than taxes. Recent decisions have held that federal mortgages are not subject to state rules of "super-priority", by which real property taxes and miners' liens

prevail over earlier mortgages. *Ringwood Iron Mines* v. *United States; United States* v. *Latrobe Construction Co.* Decisions involving the priority of federal non-tax liens are usually supported by citation of federal tax lien decisions, so the possibility is presented that the whole structure of rules by which a federal tax lien supplants pre-existing competing liens may in time be applied to federal mortgages and other non-tax federal liens. Although the mandate of the Committee was not limited to the consideration of federal tax liens, that was clearly the area most in need of immediate attention, and the Committee concentrated its time and energies on the preparation of sound legislation in that area. Following the precedents established, the Sections of the Association which have special competence in the other affected areas may be able to develop comparable proposals respecting federal non-tax liens.

In the procedural area, however, some of the same statutes govern both tax and non-tax liens, and decisions involving federal mortgages are direct precedents in tax lien cases. (Cf. *United States* v. *Brosnan* (tax) following *United States* v. *Cless* (federal mortgage)) Title III, embodying the Committee's principal procedural proposals, applies equally to tax and non-tax liens. Likewise, in the case of priorities in insolvency (covered in Title II), the same statute deals with both tax and non-tax claims of the United States.

Bankruptcy and Insolvency

Since the earliest days of our Nation, the law has provided that, if a debtor of the United States is insolvent, the claims of the United States shall be first satisfied. Rev. Stat. § 3466 (31 U.S.C. § 191). *This statute has not been amended since 1799.* On its face, the priority is absolute and admits of no exceptions, and the Supreme Court has often refused to commit itself on whether a specific and perfected lien, or even a mortgage (in States where a mortgagee has a lien rather than title), could be satisfied ahead of a claim of the United States. *New York* v. *Maclay; United States* v. *Gilbert Associates.* The lower courts, however, have sustained the priority of a mortgage (*Exchange Bank & Trust Co.* v. *Tubbs Manufacturing Co.*) as well as of a prior specific lien for a real property tax. (*United States* v. *Atlantic Municipal Corp.*) Virtually all other liens, however, on one ground or another, have been held too "inchoate" to prevail over federal claims in insolvency. See *Illinois* v. *Campbell.* Even the priority of administrative expenses has been questioned.

Over one hundred years after enactment of the statute providing priorities in insolvencies, Congress established, in the Bankruptcy

Act of 1898, a system of priorities quite different from those applied in insolvency proceedings other than bankruptcy. In bankruptcy, with certain exceptions, the priority of pre-existing liens as against the trustee is preserved. In fact, even certain liens which are "inchoate", and hence would be subordinate to later federal tax liens or to the insolvency priority if bankruptcy had not occurred, are recognized as against the trustee and thus are preferred against federal taxes which had not been assessed before bankruptcy. Thus mechanic lienors and the holders of other statutory liens may be better off if the taxpayer is thrown into bankruptcy. 11 U.S.C. § 107.

In bankruptcy, even certain unsecured claims are preferred over the claims of the United States. Wages, within specified limits, are preferred not only over federal claims which had not become liens before bankruptcy, but also (as against personal property) over federal claims which had become liens but had not yet been enforced by seizure or sale. Administrative expenses are similarly favored. State and local taxes which had not become liens are equal, rather than inferior (as in insolvency proceedings), to federal taxes which had not been assessed before bankruptcy. Thus a wage earner or a State or local government may also benefit materially if the debtor is thrown into bankruptcy. 11 U.S.C. § 104.

Amendment of the lien priority statute (by Title I) would be largely futile if the lienors who are proposed to be relieved thereby might be defeated in case of insolvency. Furthermore, it seems inadvisable to have a federal priority rule in insolvency proceedings less favorable to creditors than in bankruptcy, and thus encourage the clogging of the bankruptcy courts and the duplication of administrative expenses which would result if cases which could as well be handled elsewhere were thrown into bankruptcy. Accordingly, in Title II, it is proposed that Congress consent to the establishment by the States of priorities in insolvency which place the federal claims in a position no worse than they would enjoy in bankruptcy; and also to recognize in insolvency the same lien priorities that would prevail if insolvency had not occurred.

Procedural Problems

a. *United States as a defendant.* The United States is immune from process in all litigation affecting property except in such instances as Congress shall consent. Presently, the United States, holding a mortgage or other lien, may be made a party to a suit "to quiet title to or for the foreclosure of a mortgage or other lien upon real or personal property." 28 U.S.C. § 2410. It also may be made

a party in a partition suit involving property in which it has an interest as a co-owner. 28 U.S.C. §§ 1347, 1399, 2409. However these statutory provisions exclude numerous other types of suits, involving property against which a federal lien may exist, as to which no congressional consent has been given to make the United States a party. The most common type of cases not covered by statute are suits to condemn property for highway and other public improvements, and proceedings to sell real estate in decedents' estates. In such suits there is no way to compel the United States to appear as a party defendant if it holds a tax lien against an owner or his heirs or devisees. Each type of suit presents a possibility of the government receiving part of the sale proceeds.

Although the Government has frequently appeared in such *in rem* proceedings as a condemnation suit, it now indicates an intention to take the position that a condemnation suit is not the kind of suit to which it can be made a party under the present provisions of the Judicial Code.

When a levy is made upon a debtor or bailee of the taxpayer, and there are adverse claims to the debt or property, the only feasible remedy to avoid the risk of double liability is to interplead the Government and the other claimants. But the Government cannot be sued in interpleader without its consent. Some courts have found such consent in the general consent to be sued in actions to "quiet title" (28 U.S.C. § 2410), but others hold that interpleader is not embraced in that term. The almost invariable practice of the Government, after successfully moving for its dismissal as a party because of lack of consent to suit, is thereupon to intervene in the action, which then proceeds as if it had been properly brought in the first place. Since interpleader is a remedy so necessary to the protection of third parties, consent to such suits should be made express.

The general practice in interpleader when only private parties are involved is to reimburse the stakeholder, out of the fund, for his legal expenses. The Supreme Court, resolving a previous conflict of decisions, has held that such expenses cannot be reimbursed at the expense of the Government's interest in the fund. *United States* v. *Ball Construction Co.* Previous decisions had awarded some remarkably high fees, considering the passive role assumed by a plaintiff in interpleader—possibly reflecting the procedural technicalities and shadow-boxing which the Government's practice in such cases has resulted in (as above set out). It seems that the preferable course is to make the interpleader procedure as simple and straightforward as possible, so that legal expenses will be minimized, rather than imposing such expenses on the Government.

It would be very helpful to lawyers and clients in all types of litigation to be able to adjudicate in one proceeding the interests of all parties, including the United States as the holder of a lien. Title III proposes amendment to Section 2410(a) of the Judicial Code to permit making the United States a party to any suits involving rights in or liens upon real or personal property, with specific (but not exclusive) reference to condemnation proceedings, proceedings to sell real estate in a decedent's estate, partition and interpleader. This proposed amendment is procedural in nature and by itself would in no way affect the priority of a federal tax lien as established by pertinent sections of the Internal Revenue Code.

b. *Lis Pendens.* The doctrine of *lis pendens* appears to be in effect in most if not all of the states. Under that doctrine anyone who obtains an interest in property subject to pending litigation must either intervene in the case to assert his interest or otherwise be bound by the outcome of the case and the rights declared in, or acquired pursuant to, the final adjudication. Under the doctrine, the holder of a subsequently acquired interest is deemed to be a party to the proceeding without the necessity of serving separate process on him. It has been said that these rules are required by the necessities of mankind and that if the rules did not exist, litigation would be endless because repeated transfers of interests, both voluntary and involuntary, would make it impossible to secure a final adjudication that would bind all such subsequently acquired interests.

Private persons are uniformly bound by the doctrine. Early decisions repeatedly held the Government is likewise bound when acquiring a non-tax interest. *Ward* v. *Congress Construction Co. United States* v. *Mayse. United States* v. *Calcasieu Timber Co. United States* v. *Chicago, M. & St. P. Ry.* While there has been no direct decision on whether the *lis pendens* doctrine is applicable to the Government when it acquires a tax lien against a party to litigation involving property, the *White Bear Brewing Company* case may be claimed to throw some doubt on the applicability of the doctrine as to subsequently arising federal tax liens. In any event, it is the Government's position in litigated cases that a federal tax lien acquired against property then involved in pending litigation is not affected by such litigation unless the Government is made a formal party and served with summons. This position is taken even though the federal tax lien is unrecorded.

If this position is upheld, the delay and burden of amending proceedings each time the Government obtains a tax lien against any party to the litigation is quite obvious. If the proceeding is not

so amended, the final adjudication is of little value for the successful party will be required to re-litigate the entire matter with the Government in a separate proceeding, or undertake the steps necessary to secure an administrative release of the federal tax lien which in fact may be of little or no value to the Government.

Title III proposes amendment of Section 2410 of the Judicial Code expressly making the doctrine of *lis pendens* applicable to all federal liens which arise subsequent to or are recorded after the time a proceeding becomes *lis pendens* under state law as to property or rights to property of a debtor. Provision is made for written notice to the Government to afford it an opportunity to appear and defend if it so chooses.

c. *Non-judicial Enforcement of Mortgages and Liens.* In many States, a mortgage or deed of trust may be foreclosed under a power of sale, without the expense and delay inherent in judicial foreclosure. The Fifth Circuit has held that a junior federal lien may be discharged by such a sale (*United States* v. *Boyd*), but the Government's position, supported by the language of other decisions (*Metropolitan Life Insurance Co.* v. *United States*), is that only a judicial proceeding to which the United States is a party can affect the junior federal lien. It is proposed, in Title III, to permit the non-judicial sale, where authorized, to discharge a junior federal lien, subject to giving the Government advance notice so that it may protect its interests. The House of Delegates approved a like recommendation in 1956.

d. *Government's Right of Redemption from Sale.* Under present law, the Government has a one-year right of redemption from a judicial foreclosure sale. 28 U.S.C. § 2410(c). In *United States* v. *Boyd,* it was declared that the same right implicity exists in the case of a non-judicial sale. The right is rarely exercised, but it probably depresses the price obtainable (the opposite of its intended effect). Its elimination is proposed in Title III. The House of Delegates approved a like recommendation in 1956.

e. *Suits by Third Parties Whose Property Is Seized or Threatened.* Section 2410 of Title 28, U.S. Code, does not confer jurisdiction to bring any action, it merely consents to joinder of the United States in actions for which jurisdiction otherwise exists, under state or federal law. *Wells* v. *Long.* The Internal Revenue Code is notably silent concerning the procedural rights of persons whose properties are seized or threatened with seizure for the taxes of another (except for the cumbersome and rarely used "quiet title" procedure under § 7424, I.R.C., which, although available to third

parties and not to taxpayers, is misleadingly included in the subchapter entitled "Proceedings by Taxpayers"). The result has been a painful process of development of procedural law by litigation, in which parties whose properties were threatened were put to the expense and delay of argument on technicalities. (One case went through three appeals on technical points, without reference to the merits.)

Proposed Title I, Section 7431 (which would constitute a new subchapter entitled "Proceedings by Non-taxpayers"), represents a codification of the procedural rights of third parties, by express grant of jurisdiction. In large part, the proposed provision declares existing law. The right to obtain an injunction against seizure and sale of the property of one not the taxpayer is well established (*Raffaele* v. *Granger*), and as an incident thereto, a declaration of rights in the property may be obtained (*Tomlinson* v. *Smith*), but there has been fruitless litigation over whether the nominal party to be enjoined should be the United States or the tax collector. The proposal would confirm those rights but remove the technicality. Suit would expressly be permitted against the United States but, if the plaintiff sued the District Director, the advantage would be taken out of the technical defense by a provision that the United States may be substituted, as of the date of commencement of the action.

Present decisions also permit one whose money is wrongly seized for another's taxes to sue the United States for its recovery, but the suit must be in the Court of Claims if the amount exceeds $10,000 (although there are also decisions permitting such suit to be brought in the district court, without jurisdictional limit, if the Director is the nominal defendant). The authorities are divided on whether a third party must file a claim for refund and wait six months before he can sue, as a taxpayer who asserts an overpayment must do. It seems that the innocent third party should not be subjected to that delay, and that it is also in the interest of the Government to get the matter settled quickly so that it can proceed to collect the tax from other sources if the collection is found to have been in error. Therefore, the proposal makes clear that the requirement of a refund claim does not apply, and also would remove the $10,000 jurisdictional limit, just as it has been removed with respect to taxpayers' refund suits against the United States in the district court.

In view of the policy of Congress in the Tort Claims Act, denying the right to sue the Government for damages for acts relating to tax collection, no right to recover damages from the United States would be conferred, but any existing right to recover damages from

the person responsible would be preserved. However, if the third party's property is wrongfully seized and then lost, destroyed or materially injured, or is sold and cannot be traced and recovered by him, he would be entitled to recover its value from the United States hereunder.

Because any claim by a third party that his property has been wrongfully applied on another's tax raises a doubt whether the taxpayer's liability has really been satisfied, the proposal would impose a short statute of limitations on all such actions (except those commenced before application of the money or the proceeds of property on the tax). It is important to bring the issue to a head as quickly as possible. The Committee recognizes that problems arise concerning the status of the taxpayer's account in the interim. These are problems which now exist, and are not created by the proposed legislation, but it seems important to deal with them in the statute. Should the credit to the taxpayer's account be reversed as soon as such a controversy arises? If so, should the taxpayer be subjected to collection a second time, from other property, even though he claims and the Director initially determined that the property already taken belonged to the taxpayer? If not, may not the statute of limitations on collection from the taxpayer expire while the controversy goes on with respect to the original collection? The Committee considered legislation on this aspect (and will be pleased to make its draft work available to the Treasury and the Congress). But the Committee concluded that the problem is an administrative one, on which it has no special competence, and accordingly it makes no specific recommendation on this aspect of this procedural problem.

f. *Defense of Collection Suit on the Merits.* If the Government sues to foreclose a tax lien, or asks affirmatively for such relief when it is joined in a suit by a mortgagee or other lien claimant, may the taxpayer defend on the ground that he does not owe the tax? The decisions on the matter are in confusion. The House version of H.R. 8300, which became the 1954 Code, provided in § 7403 that, in a foreclosure suit by the United States, the lien should be conclusively presumed valid. The Senate struck out that provision, but its Committee Report stated merely that such elimination was "not designed to change the effect under existing law given to the assessment in such an adjudication." Sen. Rep. No. 1622, 83rd Cong., 2d Sess. 610.

On the one hand, it seems unfair to permit the judicial sale of a taxpayer's property before the taxpayer is given a chance to show that he does not owe the tax. It is true that if the Government had proceeded by levy, without a court action, the same result would

have followed. But, once the matter is in court, it seems a futile duplication of litigation to require the taxpayer to submit without contest in the collection suit, and then to bring another suit for refund—especially if the collection suit is in the federal court, the same one that may later hear the refund suit (so that no advantage in choice of forum would be gained by the taxpayer if he were permitted to litigate the merits in the first suit).

On the other hand, a number of objections may be raised, some of which can readily be met. It may be said that the taxpayer should not be enabled to place the burden of proof on the Government, by forcing it to establish the merits in a collection suit; but that objection can readily be met by a provision shifting the burden of proof, as has been done with respect to counterclaims by the Government for additional tax, in I.R.C. § 7422(e). It may also be objected that a great many suits, initiated by other lien claimants under 28 U.S.C. § 2410, in which the Government seeks to enforce its lien, are brought in state courts, which have no competence to pass upon complicated federal tax questions; but that objection may be eliminated by adoption of the Committee's proposal (Title III, Section 1446) to permit the Government to remove such an action to the federal court within 20 days after the merits are placed in issue (whereas, at present, the right to remove would normally have expired before it can be known that the merits will be raised).

A further objection is that the property involved in the foreclosure suit may be less than the amount of the tax assessment, so that the liability may be litigated piecemeal. Cf. *Flora* v. *United States.* That would be a valid objection only in a limited number of cases, since (unless personal jurisdiction of the taxpayer is lacking) the Government ordinarily seeks a personal judgment for the entire tax, even if the property being foreclosed will cover only a fraction of the tax.

Whichever answer is adopted as a matter of policy, certainty is important. If it is permissible to raise the merits in the collection suit, the taxpayer who fails to do so will be confronted with a plea of res adjudicata when he later seeks a refund, and hence the present confusion in the cases may be seriously misleading.

A related problem concerns the right of a person other than the taxpayer to contest the merits. The question whether the taxpayer owes a tax may be very important to a third party who holds a subordinate lien; yet the taxpayer himself may not contest the tax, if there will be no equity for him in any event. The existing decisions bar the third party from raising the issue. That may be the only practical solution, since otherwise the Government might have to

establish the merits in a number of suits, involving adverse claimants who were not parties to the earlier suits and were not bound by them. Furthermore, the third party is ordinarily not in a position to litigate the taxpayer's liability effectively. Perhaps sufficient protection will be afforded third parties in this respect by entitling the taxpayer to contest the merits; since, in such a case, there would be less temptation to the taxpayer to default on any litigable issue if res adjudicata will prevent his later seeking a refund or defending a further collection suit.

The Committee reached no conclusion on the foregoing matter and makes no recommendation.

g. *Release or Discharge of Tax Lien.* The law provides an administrative remedy whereby the title to property may be cleared of a federal tax lien upon payment of an amount equal to the value of the Government's interest in the property (or for no payment, if such interest has no value). I.R.C. § 6325(b)(2). That procedure is of no avail, however, if there is a dispute over the priorities of liens or over the taxpayer's ownership of the property. In such cases, time-consuming judicial remedies may be the only recourse. Yet it may be vital to clear the title more promptly than such procedures permit.

The few decisions are in confusion concerning whether the applicant may, in such a situation, pay the sum demanded in order to get a clear title, and then sue for its recovery. Since the Government may, having received such payment, refrain from making timely collection from other property of the taxpayer's, some restrictions ought to be placed upon such right of recovery, even though the payment may be said to have been made under duress. The preferred procedure would seem to be to deposit the sum demanded for a clear title, subject to an agreement that the liens shall be transferred to the fund. Such procedure has occasionally been used, but the authority for granting a discharge other than in consideration of an unconditional payment is doubtful. In addition, persons availing of it have been trapped in technicalities concerning the appropriate judicial procedure. Title I, Section 6325(b)(3) proposes a procedure whereby payment for a discharge may be made under protest, and the disputed issues of ownership and priority (but not value) may then be litigated after the property has been cleared of the lien. Because payments for discharge of lien are credited on the tax, the dispute will leave the status of payments on the taxpayer's account unsettled. Therefore, the proposal would require that protest accompany the payment and that suit be started within 60 days.

Situations sometimes arise where the taxpayer's ability ultimately to work off his tax liabilities would be impaired by sale of his property or business, yet he may be able to make a substantial tax payment by placing a mortgage on the property, if the tax lien can be subordinated to the mortgage. Although the Government would be in the same relative position as before, since it has cash to the extent that it gave up its prior lien, the situation does not clearly fit the terms of the discharge statute. A similar situation may arise where the taxpayer desires to borrow money to deposit with an offer in compromise, yet cannot get the lien released or discharged for that sum until after the offer is accepted. Although such arrangements have often been refused on the ground of lack of authority in the law, they have occasionally been approved where it seemed beneficial to the Government to do so. But, with the legal authority doubtful, lenders are reluctant to rely on the subordination of the tax lien even if it is tendered. Proposed Title I, Section 6325(d) would authorize such procedure in the discretion of the District Director.

In many cases where fraud is alleged, the Government "freezes" the taxpayer's assets by making a jeopardy assessment, thereby imposing a lien on all of his property. If, as is sometimes the case, the amount arbitrarily assessed exceeds the taxpayer's property, the usual statutory rules will not permit any funds to be discharged from the lien. The taxpayer thus may be unable to obtain access to funds even to preserve the property and keep it insured (which would be as much to the Government's benefit as his own). Furthermore, the taxpayer may be left dependent on court-assigned counsel for his defense in a criminal case and unable to employ accountants, pay traveling expenses for witnesses, and otherwise pay the costs of an adequate criminal defense and of litigating the amount of his civil tax liability. The Association recommended in 1958, therefore, that provision be made for release of funds or other assets from the lien of a jeopardy assessment, to the extent necessary to pay the expenses of a criminal or civil tax case, or to repair, maintain or preserve liened property, or to meet subsequent Federal tax obligations, including estimated taxes. The proposal would permit such release by administrative action or in the discretion of a court. The Committee's omission of this proposal from the proposed draft legislation is not to be construed as disapproval of the recommendation. Since the Association had already acted on it, the Committee did not give it comprehensive independent study. However, the suggestion was offered that the problem may not be confined to jeopardy assessments of income, estate and gift taxes under Section 6861, I.R.C., but may apply also in the case of retailers' and manufacturers'

excise taxes, employment taxes, gambling taxes, liquor and narcotics taxes, and others that are assessed and collected (irrespective of jeopardy) without prior opportunity for determination of the merits of the Tax Court. If the proposed amendment is to be given more general effect, it may more appropriately belong in Section 6325, I.R.C., than in Section 6861, as the Association proposed.

After notice of a tax lien is filed, subsequent payments on account will not show on the record, until the lien is released by full payment. In order that persons dealing or proposing to deal with the taxpayer's property may know the extent of the prior lien, Sec. 6323(d) of the 1954 Code provides for disclosure by the Director to such persons of the amount outstanding. But the law fails to specify whether such persons will be protected in relying upon such information if it is in error, and the rule that the Government is not estopped by the acts of its officers may leave such persons unprotected. In contrast, a certificate of release or discharge of a lien, which may induce similar reliance, is given conclusive effect. It is proposed that similar conclusive effect be given to a disclosure of the amount outstanding, in favor of persons relying on the information, other than the taxpayer. Proposed Title I, Section 6323(n), covers the point.

When a lien is on file in a certain name, it may cloud the titles of others having the same name. The situation is not appropriate for issuing a statutory release or discharge of lien, but the practice has developed of issuing a "certificate of non-attachment," certifying that the person to whom it is issued is not the taxpayer against whom a lien is filed. However, since the certificate has no statutory sanction, it is questionable whether third parties would be protected by it if it should be in error. It is recommended that, as against third parties, the certificate be given the same conclusive effect as a release or discharge. Proposed Title I, Section 6325(e) and (f).

h. *Levy and Sale.* 1. *Interest Conveyed.* When real property is sold under levy, the deed conveys the interest the taxpayer had when the Government's lien attached. I.R.C. § 6339(b)(2). In the case of sales of personal property, the sale transfers all the right, title and interest of the taxpayer, and it is left to judicial interpretation whether that means his interest at the time the lien attached or at the time of the sale. I.R.C. § 6339(a)(2). Neither rule would work perfectly, however, under a system under which certain liens attaching to the property after the Federal tax lien attaches are favored, while some that may previously have been on the property are not recognized. It might be an acceptable solution to leave the

present rule in effect, that the sale cuts off subsequent liens, and then transfer such liens to the proceeds if they are liens which the law prefers over the Federal lien. One difficulty with so providing would be that it would necessitate the Government putting up cash to pay such preferred liens, if it bids in the property, whereas the present rule does not require the Government to pay anything, since all it acquires is the taxpayer's interest. The alternative would be a provision that the sale shall convey only the interest of the United States, subject to both earlier and subsequent liens having priority. The choice should depend on administrative practicability. Although the Committee gave consideration to possible amendments of Sections 6335 and 6339, I.R.C., in this regard, and will be pleased to make the results of its study available to Congress and the Treasury, it has concluded that those charged with collection administration are in the best position to make the policy decisions required. Therefore, no recommendation is made.

2. *Sale of Controversial Titles.* When there is a dispute concerning the ownership of property or the priorities of liens, the most appropriate remedy is a judicial sale, which permits resolution of the dispute. At times, however, an administrative sale under levy is made, with the rule of *caveat emptor* applying. The adverse claimant may announce his claim at the sale, thus warning off purchasers and driving down the price, to the detriment of both the Government and the taxpayer, and to the benefit only of a speculative purchaser. Consideration might be given to a rule requiring the Director to announce the extent of the interest being sold and the liens subject to which it is sold, and providing indemnification of the purchaser (not a warranty, but limited to the amount received by the United States out of the proceeds) against any liens or interests which are unknown to or denied by the Director. However, administrative considerations are involved of which the Committee is not qualified to judge, so no recommendation is made.

3. *Penalty for Non-Compliance With Levy.* If a debtor or bailee of the taxpayer fails to turn over money or property of the taxpayer in response to a levy and demand, I.R.C. § 6332(b) imposes a 100% "penalty" regardless of fraud or bad intent. Often there may be doubts concerning a person's liability to the taxpayer, or the taxpayer's ownership of the claim or property. It has long been considered, even by the Revenue Service, that this "penalty" is not penal, but is to be applied on the tax. But a district court decision in 1955 read the statute literally, as imposing a penalty over and

above the tax (as a consequence of which payment of the penalty would not relieve the innocent third party of his obligation to the taxpayer). It is proposed in Title I, Section 6332(b), to confirm the former rule. Furthermore, where the failure to comply with a levy results from the assertion of an adverse claim, the debtor or person in possession of property would be wholly relieved of the penalty if he promptly interpleads the United States and the adverse claimant (but not if he decides the issue for himself and pays over to the adverse claimant, if that proves to be in error). Sec. 6332(e).

Problems Concerning Property Subject to Federal Tax Lien

Although its mandate was expressly not so limited, the Committee has considered its primary assignment to be the production of corrective legislative recommendations in the area of the priorities, obligations, and procedural rights of third parties who become enmeshed with federal tax liens, since it was the highly unsatisfactory situation in that area which gave rise to the appointment of the Committee. Accordingly, because that task consumed so much of its time, the Committee did not address itself to the important questions relating to the coverage of the federal tax lien. Moreover, this Committee has no special competence on such questions, and the questions do not appear to call for the kind of coordinated effort for which the Committee was appointed. However, the Committee suggests that the following questions merit the attention of interested Sections:

a. *Exemptions.* Property exempt from levy for federal taxes is described in I.R.C. § 6334. The list of exemptions, which is extremely narrow, was re-examined and modernized by Congress in 1954, and it was expressly provided that no property not there enumerated should be exempt, even under other federal laws providing exemptions. Unemployment benefits, old age assistance, workmen's compensation, disability insurance proceeds, veterans' benefits, and other rights commonly exempted from execution, are subject to levy for federal taxes. Wages are subject to levy, with no minimum exemption for subsistence.

The suggestion has been made that, like the collection of federal courts' judgments, the collection of federal taxes should be made subject to the exemption laws of the states. However, the subjection of private suitors in the federal courts to the same rules that would apply if they sued in the state court is not necessarily a valid precedent for adopting such a proposal. It would mean that, depending entirely on each State's concept of the relative equities of debtors

and creditors, the tax lien would be unenforceable in some States against life insurance policies, spendthrift trust income, and homesteads (ranging in value from $1,000 in New York to unlimited in Minnesota), while like property of taxpayers in other states would be subject to the tax lien. It seems preferable, therefore, for Congress to give consideration to whether additional exemptions are warranted, on a uniform national basis.

b. *Tenancy by the Entirety.* About half the states recognize a special form of joint tenancy between husband and wife, known as tenancy by the entirety. Although some of those states permit separate creditors to levy upon the interest of the indebted spouse, in effect converting the estate into a tenancy in common with right of survivorship, the majority immunize such property entirely from separate creditors, on the theory that it is owned by the fictional unity of husband and wife and that, while each owns the whole, each owns no interest in the property. Although the Government can reach such property for joint tax liabilities (including liability on a joint income tax return), despite state exemption laws, it has been unable to reach it for separate tax liabilities. The Fifth and Eighth Circuits have held that the tax lien does not attach, during the joint lives, even to the tax-debtor's expectancy of survivorship, so the husband and wife have been allowed to sell or mortgage the property free of tax liens already on file. (*American Nat. Bank of Jacksonville; United States* v. *Hutcherson.*) The immunity has been extended even to the income from the property, which is taxable but cannot be levied upon. The tenancy by the entirety is not confined to homestead property; but personal property and business realty may be so held. In Pennsylvania, a joint bank account held in tenancy by the entirety has been held, by the Third Circuit, to be immune from seizure for separate federal taxes. (*Raffaele* v. *Granger.*)

In the House version of H.R. 8300, which became the 1954 Code, an attempt was made to extend the tax lien to "the interest of such person as tenant by the entirety", but the Senate deleted it because it was "not clear what change in existing law would be made." Since each spouse, for his or her own benefit, has a very real and valuable property right (joint use and possession, the right to share the income, and the right to the whole property upon survival), it should not be possible for them to hold and dispose of the property free of their several tax obligations. Yet some significant problems exist, particularly in making the taxpayer's interest subject to sale without impairing the rights of the other spouse. Sale of the right of one spouse to possession during the joint lives presents obvious

difficulties where the property is occupied as a residence, although it might be feasible where the property is rented. If the tax-debtor's right of survivorship were sold, it would probably bring a low price, causing a sacrifice to the taxpayer without commensurate benefit to the Government. Possibly the solution lies in subjecting the tax-debtor's interest (including the income and the right of survivorship) to the tax lien but not to sale, and providing for a court proceeding to declare, but not foreclose, the lien (so that litigable questions may be disposed of within the period of limitations); it might be provided that the court shall make such order as may be necessary to protect the Government's interest during the joint lives. It may be much more difficult, in the case of a bank account held by the entirety, to protect the wife's interest without jeopardizing the Government's position.

c. *Joint Tenancy.* Ordinary joint tenancies present a different problem. Most joint owners have the power, during their joint lives, to sever the tenancy and cut off the right of survivorship, and their creditors can do the same. Thus, until the death of the tax-indebted joint tenant, the tax could be satisfied from his share. But if the taxpayer dies before the tax is collected, the survivor takes the whole property and, under the decisions, is free of any liability for the tax. (*Tooley* v. *Commissioner.*)

It is suggested that the interest which could have been reached during the taxpayer's lifetime, free of the right of survivorship, might be made subject to the tax liability in the hands of the survivor (through either lien or transferee proceedings).

d. *Homesteads.* The homestead exemption laws of the States do not apply as against the federal tax lien. (*United States* v. *Heffron.*) But the homestead laws of some States have been held to create an indivisible and vested interest in the husband and wife, which cannot be subjected to levy and sale for the separate tax of one of them. (*Jones* v. *Kemp; Paddock* v. *Siemoneit.*) Thus, a problem is presented similar to that involved in tenancies by the entireties.

e. *Partnerships.* Many of the taxes incurred in conducting a partnership business are imposed upon the partnership as such and become liens upon its assets. But the income tax on partnership income is imposed, not on the partnership, but on the individual partners. I.R.C. § 701. The lien for income taxes, therefore, attaches only to what the individual owns, which includes only a right to the surplus assets of the partnership after all partnership debts (including unsecured and subsequent debts) have been satisfied.

This rule applies equally in bankruptcy (*United States* v. *Kaufman*), insolvency (*United States* v. *Hack*), and lien enforcement cases (*Adler* v. *Nicholas*), at least where other creditors are affected. One early district court case (*In re Brezin*), recognized an "equitable lien" (not a lien under what is now I.R.C. § 6321) in favor of the United States, extending to the partner's interest in the undistributed profits of the years for which the individual's income taxes were delinquent. The decision was distinguished, without approval or disapproval, by the Supreme Court, but has never since been cited or applied.

The Government's position with respect to partnership capital resembles the situation where the business is incorporated—in either case, the individual's interest in the income-producing capital, which can be reached for satisfaction of his taxes on such income, is subordinate to all creditors of the business entity. The important difference is that, in the case of the corporation, the individual is taxed only on distributed income, which thus is available in his hands for satisfaction of the tax. Partnership income is taxed to the partners even though the income does not reach their hands or become available for tax collection. Possibly, then, a solution should be adopted which would, in effect, confirm and codify the *Brezin* rule—i.e., subjecting partnership property to the lien for individual income taxes to the extent of the partner's share in undistributed profits. Details to be settled would include (1) whether the lien should extend to other individual taxes (including income taxes to the extent not attributable to partnership profits), on the theory that the partner in effect owns such undistributed profits; (2) what effect should be given to a partnership agreement restricting withdrawal of profits; (3) what effect should be given to losses which reduce undistributed profits after the taxable year (they were given no effect in the *Brezin* case, apparently on the theory that, if the taxpayer had exercised his right to withdraw the profits when earned, the loss would have fallen on the partnership capital).

f. *Life Insurance.* At the present time, the life insurance of a living taxpayer is subject to the tax lien, and the surrender of the policy may be compelled, for application of the cash value on the tax liability. If the taxpayer dies after a tax assessment has been made, but before enforcement, the amount of the cash value (as of the date of death) may be recovered from the beneficiary. *United States* v. *Bess.* But if the taxpayer happens to die before an assessment is made, the beneficiaries will ordinarily receive the full proceeds free of liability for the tax owed by the decedent, even though he died insolvent and they are donees and he had retained the power to cut

them off until the moment of death. *Commissioner* v. *Stern.* Consideration should be given to whether such discrimination based on the accident of when the assessment was made should be continued, in the case of such rights passing without consideration; and whether the equities of widows and orphans are greater in the case where the decedent left his wealth in the form of life insuranec than if it were in a form which would be fully subject to federal tax collection in the hands of his estate. Possibly a minimum exemption for life insurance should be provided, with the tax liability attaching to the excess, whether assessed before or after death.

A related problem involves the protection of a delinquent taxpayer's beneficiaries by avoidance of surrender of his life insurance, upon payment to the Government of its cash value. A discharge of a federal tax lien can probably be obtained under present law if a beneficiary or other third party puts up the full cash value and takes over the equity in the policy, but such a discharge of the lien cannot be obtained where the taxpayer himself pays over the full current cash value but keeps the ownership of the policy and the right to increments in its value—because the Internal Revenue Service, for obvious reasons, will not discharge property from a federal tax lien unless the taxpayer is transferring all his interest in the property. The Committee considered a suggestion that the taxpayer himself be permitted, as a matter of right, to redeem his insurance from the federal tax lien upon payment of its cash value at the time of assessment of the tax, thereby permitting him to own all future increments in value (from interest accumulations or from his own premium payments) free of the tax lien. It is doubtful that any such provisions, at least unless coupled with a limitation on the amount of increment which might thus be freed of the lien without payment, would be acceptable to the Government. In the time available after the suggestion was received, the Committee was unable to frame a provision for mandatory discharge which would meet the Government's potential objection.

However, it is suggested that other provisions of the Committee's proposed draft legislation could be availed of to permit such a taxpayer to salvage his insurance. He would be able under proposed Title I, Section 6332(c) to borrow the cash value and later increments from the company in order to pay premiums or make payments on his tax liability; or, under a subordination agreement as provided in proposed Title I, Section 6325(d), he could be permitted to borrow for the same purposes from a third party on the security of the policy.

APPENDIX

Part II

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TITLE I: PRIORITY AND EFFECT OF TAX LIENS AND LEVIES

Sec. 1. Priority of Liens.

Section 6323 of the Internal Revenue Code of 1954 (relating to validity of lien against mortgagees, pledgees, purchasers and judgment creditors) is amended to read as follows (present language to be deleted is struck through; new matter is in italics):

SEC. 6323. VALIDITY AGAINST ~~MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS~~ *SECURITY INTERESTS, LIENS AND TRANSFERS.*

~~(a) INVALIDITY OF LIEN WITHOUT NOTICE. Except as otherwise provided in subsection (c), the lien imposed by section 6321 shall not be valid as against any mortgagee, pledgee, purchaser or judgment creditor until notice thereof has been filed by the Secretary or his delegate—~~

(a) SECURITY INTERESTS.—

(1) PRIORITY ESTABLISHED.—If, before notice of the lien under section 6321 is filed pursuant to subsection (k), a security interest becomes effective (as such terms are defined in subsection (p)), such security interest shall have priority over the lien under section 6321, except as otherwise provided in this section.

(2) SECURITY FOR FUTURE OBLIGATIONS.—With respect to any portion of the consideration for a security interest which is disbursed or delivered, or required to be disbursed or delivered, after the filing of notice of the lien under section 6321 pursuant to subsection (k), and more than 30 days after the security interest becomes effective, the priority otherwise existing under applicable law and this subsection shall be recognized only if—

(A) The holder of the security interest or the predecessor in interest of such holder became obligated, at or before the time of filing of notice of the lien under section 6321 pursuant to subsection (k), to disburse or deliver such consideration or to make surety payments upon the happening of an event beyond the control of such person; or

(B) The security interest indemnifies the holder against a loss or liability, the incurring of which depends upon conditions which are beyond the control of such holder at the time of the filing of notice of the lien under section 6321 pursuant to subsection (k); or

(C) The security interest secures a single public issue of securities; or

(D) The holder of the security interest or the predecessor in interest of such holder has, before the filing of notice of the lien under section 6321, pursuant to subsection (k), made loans, delivered merchandise on credit, incurred liabilities or undertaken surety obligations, for the purpose of the purchase, acquisition, construction, improvement, alteration, repair, replacement or demolition, or processing or manufac-

turing to a further or finished state, of the property subject to the security interest, or for the performance or completion of a contract the proceeds of which are subject to the security interest, or for raising or harvesting a crop or livestock, and subsequent loans, payments or extensions of credit are actually used to continue or accomplish the same purpose.

(E) In all other cases, the holder of the security interest or the predecessor in interest of such holder has disbursed or delivered such consideration more than 15 days but less than one year after actual delivery to the Secretary or his delegate of a written notification of the financing arrangement, accompanied by the requisite fee, and the Secretary or his delegate has not in writing or by collect telegram advised the person specified in such notification (or in an amendment thereof delivered at least 15 days previously) that a notice of the lien under section 6321 has been filed. As used herein, the term ''financing arrangement'' means any security interest, existing or in contemplation under any arrangement between the parties. Such notification may be given by any party to the arrangement or by any person acquiring a lien or interest subordinate to the security interest existing or to be created under such arrangement. Promptly upon receipt of notification of such a financing arrangement, or of an amendment thereof, the Secretary or his delegate shall inform the person specified therein of the date of receipt thereof. The form and contents of the notification of the financing arrangement, the office with which it shall be filed, and the amount of the requisite fee shall be prescribed by the Secretary or his delegate. If, at the time of the disbursement or delivery of such consideration, the filing of a notice of the lien under section 6321 is actually known or reasonably should have been known to any responsible individual acting in the transaction as or on behalf of the then holder of the security interest, such knowledge shall have the same effect as such written or telegraphic advice from the Secretary or his delegate.

(3) AFTER-ACQUIRED PROPERTY.—In the case of a security interest which covers after-acquired property, the priority otherwise existing under applicable law and this subsection shall, with respect to such property acquired after the filing of notice of the lien under section 6321 pursuant to subsection (k), extend only to—

(A) Property (including money or rights to money) the acquisition, production or earning of which was financed, or the surety bond for the production or earning of which was obtained, upon the security of such security interest;

(B) Property which is attached to and physically becomes an integral part of the property subject to the security interest; and

(C) Property which is substituted for other property subject to such security interest, to the extent necessary to maintain unimpaired the value of such security as of the time when notice of the lien under section 6321 was filed pursuant to subsection (k), increased in the same ratio as the net amount of any consideration subsequently disbursed or delivered, with respect to which the holder of the security interest is

entitled to priority under paragraph (2) of this subsection. If inventory is acquired or sold or equipment is replaced in the ordinary course of business, it shall be presumed, unless shown to the contrary, that the full amount of the property or proceeds so acquired is necessary to maintain unimpaired the value of the security.

(b) PURCHASES AND LEASES.—If, before notice of the lien under section 6321 is filed pursuant to subsection (k), any person, for value, purchases or leases property of any kind (as such terms are defined in subsection (p)), the lien under section 6321 shall not be valid as against such person.

(c) MECHANICS' LIENS.—If, before notice of the lien under section 6321 is filed pursuant to subsection (k), a mechanic's lien upon immovable or real property becomes effective (as such terms are defined in subsection (p)), such mechanic's lien shall have priority over the lien imposed by section 6321, but subject to the restrictions set forth in subsections (h) and (i).

(d) JUDGMENTS.—If, before notice of the lien under section 6321 is filed pursuant to subsection (k), a judgment in a judicial proceeding has been rendered by any court and the lien of the judgment has become effective (as that term is defined in subsection (p)), or an interest in or lien upon property has been determined by judgment or decree, the lien of such judgment or the lien or interest so determined shall have priority over the lien under section 6321.

(e) LANDLORDS' LIENS AND SECURITY INTERESTS.—If, before notice of the lien under section 6321 is filed pursuant to subsection (k), a lien or security interest of a landlord securing any obligation under a lease or tenancy (other than for money advanced or goods delivered by the landlord) becomes effective (as such terms are defined in subsection (p)), such lien or security interest shall have priority over the lien under section 6321, but such priority (notwithstanding subsection (a)) shall be limited to—

(1) Rent and other obligations accruing before the filing of notice of the lien under section 6321 pursuant to subsection (k);

(2) Rent and other obligations accruing after such filing, in the case of a possessory security interest; and

(3) Rent and other obligations accruing after such filing and during a period not in excess of 3 months, in the case of a lien or non-possessory security interest (except that, in the case of a farm lease or tenancy, the period shall be one year).

If the lien of a landlord under applicable law secures money advanced or goods delivered, such lien shall to that extent be governed by subsection (a), as if such lien were provided by contract.

(f) STATE AND LOCAL TAXES.—If, before the lien under section 6321 arises as provided in section 6322, any tax imposed by any state or local taxing authority (other than a real property tax or a special assessment as described in subsection (o)(11) and (12)) is assessed or otherwise determined and becomes effective as a lien, the lien of such state or local tax upon the property subject to such lien (whether general or specific) shall have priority over the lien under

section 6321. The term "state" shall include the Territories and the District of Columbia.

(g) INTEREST AND EXPENSES.—Notwithstanding any other provision of this section, if a security interest or lien has priority over the lien under section 6321, such priority shall extend as well to any interest or finance charges upon the obligation secured, regardless of the time of accrual thereof; and to the reasonable expenses, including attorneys' fees, of collecting or enforcing the obligation secured and insuring, physically preserving or repairing the property, if the applicable law or valid agreement so provides; Provided, that the priority of such security interest or lien shall not extend to the cost of satisfying a lien (other than a lien securing an obligation incurred for one or more of the foregoing purposes) which is subordinate to the lien under section 6321.

(h) UNRECORDED INTERESTS.—In any case in which a purchase, security interest, lien or other interest in property is not recorded, registered or filed in a public office (whether or not required or permitted by law) before the time of filing of notice of the lien under section 6321, the burden of proof shall be upon the person claiming such lien or interest to show the time when it became effective and that it was acquired for value (as such terms are defined in subsection (p)), whenever such facts are material.

(i) SPECIAL RULE FOR TAXES WITHHELD FROM WAGES.—Notwithstanding anything in this subchapter to the contrary, the lien under section 6321 with respect to the liability of an employer for taxes required to be withheld under Subtitle C from wages which have been earned for work on any project (including interest thereon but not penalties), shall be preferred over—

(1) Any lien or claim described in subsection (c) or subsection (o)(5), with respect to such project, except a lien or claim for wages if such wages have priority over other such claims and liens under applicable law;

(2) Any security interest, lien or right of subrogation arising by reason of a person's having paid or become liable for the payment of the wages with respect to which the taxes giving rise to such lien under section 6321 are unpaid;

(3) Any judgment, attachment, garnishment or lis pendens with respect to either of the foregoing; or

(4) Any lien or interest over which any of the foregoing has priority under applicable law.

(j) SUBROGATION.—Any person having a contractual, equitable or statutory right of subrogation to any lien or interest which has priority over a lien under section 6321 shall enjoy a like priority.

(k) FILING OF NOTICE OF LIEN.—

(1) IN GENERAL.—When the Secretary or his delegate deems it advisable for the protection of the revenue, he shall file notice of the lien under section 6321—

~~(1)~~ *(A)* UNDER STATE OR TERRITORIAL LAWS.—In the office *or offices* designated by the law of the State or Territory in which

the property subject to the lien is situated, whenever the State or Territory has by law designated an office *or offices* within the State or Territory for the filing of such notice; or

~~(2)~~ *(B)* WITH CLERK OF DISTRICT COURT.—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law designated an office *or offices* within the State or Territory for the filing of such notice; or

~~(3)~~ *(C)* WITH CLERK OF DISTRICT COURT FOR DISTRICT OF COLUMBIA.—In the office of the clerk of the United States District Court for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

~~(b)~~ *(2)* FORM OF NOTICE.—If the notice filed pursuant to ~~subsection (a)(1)~~ *paragraph (1)(A) of this subsection* is in such form as would be valid if filed with the clerk of the United States district court pursuant to ~~subsection (a)(2)~~ *paragraph (1)(B)*, such notice shall be valid notwithstanding any laws of the State or Territory regarding the form or content of a notice of lien.

(3) PLACE WHERE PROPERTY IS SITUATED.—For purposes of this subsection—

(A) Real property shall be deemed situated at its physical location.

(B) A vessel registered under the laws of the United States shall be deemed situated at its home port.

(C) Other tangible personal property shall be deemed situated in the State, Territory or District where it is regularly kept at the time such notice of lien is filed. Tangible personal property having no regular location shall be deemed situated at the residence of the taxpayer at the time such notice of lien is filed.

(D) Debts, bank accounts, securities, insurance policies, and other intangibles, whether or not the ownership thereof is represented by a document, shall be deemed situated at the residence of the taxpayer at the time such notice of lien is filed.

(E) The residence of a corporation or partnership shall be deemed to be the place at which the principal executive office of the business is located.

(F) If property is situated within a State or Territory (as provided in this paragraph), such State or Territory may provide its own rules concerning the place within the State or Territory where such property shall be deemed situated for purposes of filing notice of the lien; but the rules of this paragraph shall govern in the absence of express provision to the contrary in the law enacted in conformity with this subsection (or corresponding provision of prior law).

(4) EXPIRATION OF EFFECT OF NOTICE.—A notice of lien filed pursuant to this subsection shall cease to be effective—

(A) As against all property and rights to property, six years after the date of the assessment, unless the Secretary or his delegate shall file

a further notice in the same office, which notice shall designate the date to which it is extended, unless such extension is indefinite. The effectiveness of such further notice shall cease at the date so specified, or six years after it is filed if no date is specified, unless a further notice is filed in like manner.

(B) As against property and rights to property with respect to which the notice is required, by this subsection or by valid state law, to be filed at the residence of the taxpayer, one year after the date on which he ceases to reside in the county or other jurisdiction where the notice of lien is filed.

(C) As against property and rights to property with respect to which the notice is required to be filed at the location of the property, one year after such property ceases to be regularly kept in the county or other jurisdiction where the notice of lien is filed.

(l) EFFECT OF KNOWLEDGE OF UNFILED LIEN.—As against a person who in bad faith purchases, leases, or acquires a security interest in or a judgment lien upon the taxpayer's property (as such terms are defined in subsection (p)), any lien existing under section 6321 shall, except as provided in subsection (m), have the same effect as if notice thereof had been filed pursuant to subsection (k) at the time such person acquired knowledge of such lien.

(m) CIRCULAR PRIORITY AND RELATED MATTERS.—

(1) DEFINITIONS. For purposes of this subsection—

(A) ''Circular priority'' means a situation in which one lien or interest is entitled to priority over the lien under section 6321 but is subordinate to another lien or interest, which in turn is subordinate to the lien under section 6321.

(B) ''Expected sum'' means the amount which the United States would receive out of the fund available for distribution on the basis of the priority of its lien with respect to the other liens or interests, disregarding the relative priorities of the other liens or interests with respect to each other.

(C) ''The interest described in paragraph (1)(C)'' means any purchase, lease, security interest or lien which would have priority over the lien under section 6321 but for the fact that (i) such interest was acquired in bad faith (as provided in subsection (l)) or (ii) such interest was not acquired for value (as defined in subsection (p)).

(D) ''The lien described in paragraph (1)(D)'' means a lien under section 6321, notice of which has not been filed pursuant to subsection (k) prior to the time the interest described in paragraph (1)(C) is acquired.

(E) A ''good faith party'' means a person not having knowledge of the fact that an interest described in paragraph (1)(C) was acquired in bad faith or was not acquired for value (as such terms are defined in

subsection (p)), or not having knowledge that the lien described in paragraph (1)(D) existed when such interest was acquired.

(2) GENERAL RULE.—Except as otherwise provided in this subsection, whenever circular priority exists, the United States shall be paid its expected sum, and the amount payable with respect to the other liens and interests shall be determined under applicable law.

(3) EXCEPTION FOR CERTAIN LIENS AND SECURITY INTERESTS.—If a good faith party acquires any lien upon or security interest in property, which is subordinate to the interest described in paragraph (1)(C) but has priority over the lien described in paragraph (1)(D), the priorities of liens upon and interests in the property shall be determined as if the interest described in paragraph (1)(C) had been acquired in good faith and for value; but the United States shall be substituted for and subrogated to the rights and priority of the holder of the interest described in paragraph (1)(C), to the extent of the amount of such interest outstanding at the time of sale. Provided that, if the interest described in paragraph (1)(C) was acquired for an antecedent consideration, and not in bad faith, the amount to which the United States is subrogated under the preceding sentence shall not exceed the amount of the lien described in paragraph (1)(D), outstanding at the time of sale, reduced by the amount of the net proceeds payable to the good faith party (exclusive of the amount payable to him pursuant to the election hereinafter provided). This paragraph shall not affect the validity of any debt secured by an interest described in paragraph (1)(C), but shall affect only the security or lien. Unless the United States elects as hereinafter provided, the right of subrogation of the United States under this paragraph may be exercised only at such times and under such conditions as are prescribed in the law or agreement creating or regulating the interest described in paragraph (1)(C); but failure of the debtor to make payments to the United States at the times and under the conditions prescribed in such law or agreement shall be deemed a default thereon for purposes of this paragraph. If the United States so elects (by so signifying by appropriate pleading in court), its rights under this paragraph, in subrogation to the priority of the interest described in paragraph (1)(C); may be enforced at the time and under the conditions prescribed for foreclosure of the lien described in paragraph (1)(D); but in such event there shall be paid to the good faith party, from the amount otherwise payable to the United States in subrogation to the priority of the interest described in paragraph (1)(C), an amount which, when added to the amount otherwise payable to the good faith party out of the proceeds of the property, will fully satisfy the claim of the good faith party, to the extent that it has priority over the lien described in paragraph (1)(D).

(4) EXCEPTION FOR CERTAIN PURCHASES AND LEASES.—If, before notice of the lien described in paragraph (1)(D) is filed pursuant to subsection (k), a good faith party purchases or leases property subject to an interest described in paragraph (1)(C) (whether or not an obligation is assumed in connection therewith), the priorities of liens upon and interests in the property shall be determined as if the interest described in paragraph (1)(C) had been acquired in good faith and for value; but the United

States shall be substituted for and subrogated to the rights and priority of the holder of the interest described in paragraph (1)(C), against the property and (after delivery of notice in writing) against the good faith party, to the extent provided in paragraph (3) (except that the election provided therein shall not apply).

(5) SUCCESSORS IN INTEREST.—If a good faith party acquires any lien upon or interest in property from or through the holder of an interest described in paragraph (1)(C), the priority of the lien or interest of the good faith party shall be determined as if the interest described in paragraph (1)(C) had been acquired in good faith and for value; but the United States, to the extent of the amount of the lien described in paragraph (1)(D), shall be subrogated to any unsatisfied claim or right of the holder of the interest described in paragraph (1)(C) against the good faith party on account of such transaction (after delivery to the good faith party of notice in writing).

(6) INDEMNITY.—To the extent that a good faith party makes payment to the United States pursuant to its rights of subrogation provided in this section, the obligation of the good faith party to the obligee shall be discharged, and the good faith party shall be indemnified by the United States with respect thereto. To the extent that the United States is subrogated to a claim or right of any person against the property, such person's claim or right against the property shall be discharged, and the good faith party shall be indemnified by the United States with respect thereto.

~~(d)~~ *(n)* DISCLOSURE OF AMOUNT OF OUTSTANDING LIEN.—If a notice of lien has been filed under subsection ~~(a)~~ *(k)*, the Secretary or his delegate is authorized to provide by rules or regulations the extent to which, and the conditions under which, information as to the amount of the outstanding obligation secured by the lien may be disclosed. *If the amount of such outstanding obligation is greater than the amount erroneously disclosed in writing to any person other than the taxpayer or his representative, such disclosure shall, as against such person (including a disclosed principal of the person requesting information), have the same effect as a discharge of the lien to the extent of the amount by which the outstanding obligation exceeds the amount disclosed. The lien may be reinstated as against such person by delivery to him of written notice of correction, but such reinstatement shall not affect the priority, as provided by this section, of any lien or interest acquired by or through such person in the interim.*

(o) LIENS AND INTERESTS PREFERRED REGARDLESS OF TIME.—The following liens and interests shall, to the extent herein provided, have priority over the lien under section 6321 regardless of when such lien arises or notice thereof is filed pursuant to subsection (k):

(1) CERTAIN PURCHASERS OF MERCHANDISE.—The interest acquired by any purchaser of tangible personal property sold to him as a customer in the ordinary course of the trade or business of the seller, unless such purchaser acts in bad faith (as such terms are defined in subsection (p)).

(2) MONEY.—A right to retain money received from the taxpayer for value (including for this purpose the payment of an antecedent debt), unless such money was received in bad faith (as such terms are defined in subsection (p)).

~~(c) EXCEPTION IN CASE OF SECURITIES.—~~

~~(1) EXCEPTION.—Even though notice of a lien provided in section 6321 has been filed in the manner prescribed in subsection (a) of this section, the lien shall not be valid with respect to a security, as defined in paragraph (2) of this subsection, as against any mortgagee, pledgee, or purchaser of such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee or purchaser is without notice or knowledge of the existence of such lien.~~

(3) CERTAIN INTERESTS IN SECURITIES.—The interest acquired by any person who purchases or acquires a security interest in a security (as such terms are defined in subsection (p)); Provided that, if such purchaser or holder of a security interest has actual notice or knowledge of the existence of such lien, the priority of his interest shall be determined under subsection (a) or (b) as if notice of the lien had been filed at the time when such actual notice or knowledge was first acquired.

(4) VENDORS' LIENS AND PURCHASE MONEY SECURITY INTERESTS.—An equitable or statutory vendor's lien upon any property, or a security interest which is—

(A) Taken or retained by the seller of any property to secure all or part of its price; or

(B) Taken by any person who by making advances or incurring an obligation gives value to enable the taxpayer to acquire any interest in the property subject to such security interest, if such value is in fact so used, and if such person is entitled under applicable law to priority over pre-existing liens against the purchaser.

(5) CERTAIN CLAIMS OF MECHANIC LIENORS AND SURETIES UPON CONTRACT PROCEEDS.—Subject to the restrictions set forth in subsection (i) (relating to taxes withheld from wages), the claim or lien, under applicable law or by contract, of a person described in subsection (p)(5), or of a surety who has satisfied or become obligated to satisfy the claim of such a person, upon funds paid or payable to the taxpayer in connection with the work out of which the claim arose.

(6) CERTAIN LIENS UPON AND SECURITY INTERESTS IN PERSONAL PROPERTY.—Any of the following liens upon and security interests in personal property (including animals), acquired under applicable law or by contract, unless acquired in bad faith:

(A) A lien or security interest securing the reasonable price of the production, improvement, alteration, repair, care, safekeeping, preservation or carriage of the property subject to the lien;

(B) An innkeeper's lien or similar lien or security interest upon the baggage and effects of a transient guest;

(C) A lien upon or security interest in a female animal or the young thereof, for the services of a breeding animal; or

(D) A lien upon an animal, vehicle or vessel for damage done thereby.

(7) MARITIME LIENS.—A maritime lien arising under the law of the United States and cognizable in the courts of admiralty of the United States.

(8) CERTAIN LIENS UPON AND SECURITY INTERESTS IN CAUSES OF ACTION.—The lien or security interest of an attorney, under applicable law or by contract, upon a cause of action or the proceeds thereof, to the extent of his reasonable compensation and expenses in recovering thereon; and the lien or security interest of a hospital, physician, dentist or nurse, under applicable law or by contract, upon a cause of action or claim for personal injury or death, or upon the proceeds thereof, for the care and treatment of the injured or deceased person.

(9) DECEDENTS' ESTATES.—Expenses of administration of the estate of a deceased taxpayer and reasonable expenses of his funeral, to the extent that such items are allowed by any court having jurisdiction thereof and have priority under applicable law over statutory liens arising when the lien under section 6321 arose.

(10) CONSTRUCTIVE TRUSTS.—A constructive trust impressed by applicable law upon property of the taxpayer into which property of another person can be traced.

(11) PROPERTY TAXES.—A lien upon immovable or real property for any tax of general application levied by any taxing authority according to the value of such property.

(12) SPECIAL ASSESSMENTS.—A lien for a nondiscriminatory special assessment imposed by any taxing authority directly upon immovable or real property to defray the cost of any public improvement.

(p) DEFINITIONS.—For purposes of this section and section 6324—

(1) SECURITY INTEREST.—The term "security interest" means any interest acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability, such as a mortgage, chattel mortgage, deed of trust, chattel trust, equipment trust, pledge, assignment for security, deposit for security, trust receipt, factor's lien, inventory lien, consignment or lease intended as security, conditional vendor's interest, or similar contractual interest in any property, movable or immovable, tangible or intangible, real, personal or mixed, provided it was acquired for value (as defined in paragraph (7)).

(2) PURCHASE AND PURCHASER.—The term "purchase" means the acquisition, for value (as defined in paragraph (7)), of an interest in property in the manner of vendor and vendee, and shall include an executory contract to purchase or an option to purchase such an interest. The term

''purchaser'' means a person who acquires such an interest, or holds such a contract or option.

(3) LEASE.—The term ''lease'' shall include a contract to lease or an option to enter into or renew a lease.

(4) LIEN.—The term ''lien,'' except when used with reference to a lien under section 6321 or section 6324, means a lien or similar interest in property, existing under applicable law, whether at common law or in equity or by statute, and whether possessory or not, but shall not include—

(A) Any lien provided by or dependent upon an agreement to give security;

(B) Any lien which first becomes effective upon the insolvency of the debtor, or upon distribution or liquidation of his property, or upon execution against his property levied at the instance of one other than the lienor, even if such events occur before the lien under section 6321 arises, as provided in section 6322.

(5) MECHANIC.—The term ''mechanic'' means any contractor, subcontractor, engineer, architect, surveyor, landscaper, repairman, laborer, materialman, owner or lessee of equipment, or other person who has rendered or furnished services, performed labor, or supplied materials, equipment, transportation or power in connection with the construction, improvement, alteration, repair, replacement or demolition of any immovable or real property.

(6) EFFECTIVE.—A security interest or lien described in this section shall, execpt as otherwise expressly provided, be deemed to have become ''effective'' when the event has occurred as of which, under applicable law, such security interest or lien would have priority over third parties (other than the United States) acquiring liens upon or interests in the property for value, with or without notice, either generally or subject to such limitations or exceptions as may be provided by law, whether the obligation secured by such security interest or lien is then fixed, conditional or not yet incurred, and irrespective of the necessity of further action to complete, perfect, maintain or enforce such lien or security interest, provided such further action is taken when and as required by applicable law.

(7) VALUE.—The term ''value'' means an adequate and full consideration in money or money's worth, given or to be given; it shall include an antecedent consideration unless the acquiring person had actual notice or knowledge of the existence of the lien of the United States at the time of acquisition. An option to purchase or lease shall be deemed to have been acquired for ''value'' if the amount prescribed to be paid in order to acquire or lease the property pursuant to the option would constitute ''value'', as above defined.

(8) BAD FAITH—An act shall be deemed to have been done in bad faith if a purpose of the act is to hinder, evade or defeat the collection of the tax and such purpose, at the time of the act, was held by or known to the person charged with bad faith; but an act shall not be deemed to have been in bad faith merely because the existence of the lien of the United States was known to such person.

(9) KNOWLEDGE.—A person shall be deemed to have knowledge of a fact only if such fact is known to a responsible individual acting in the transaction as or on behalf of such person.

(10) MONEY.—The term "money" includes a check, money order or other instrument commonly used for the transmission of money, except a check drawn upon an account on which a levy is made under section 6332 before such check is charged to the account.

~~(2) DEFINITION OF SECURITY.—As used in this subsection, the~~

(11) SECURITY.—The term "security" means any bond, debenture, note or certificate or other evidence of indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; *negotiable warehouse receipt; or negotiable bill of lading.* ~~or money.~~

(12) APPLICABLE LAW.—The term "applicable law" means a statute or rule of decision of any State, Territory or the District of Columbia; and shall include also any law of the United States governing the rights and priorities of holders of liens, judgments or security interests, except this subchapter and other laws and decisions relating to the priority of debts due to the United States and the priority of liens for federal taxes as against other liens, judgments or security interests.

(13) OTHER TERMS.—The terms used in this section with reference to liens and interests in property shall also extend to liens and interests having like characteristics although known by different names.

(q) CROSS REFERENCE.—For duties and liabilities of purchasers, debtors, bailees and other persons knowing of a lien imposed by section 6321, see section 6332.

Sec. 2. Special Liens for Estate and Gift Taxes

(a) Section 6324 of the Internal Revenue Code of 1954 (relating to special liens for estate and gift taxes) is amended to read as follows (present language to be deleted is struck through; new matter is in italics):

SEC. 6324. SPECIAL LIENS FOR ESTATE AND GIFT TAXES.

(a) ~~LIENS~~ *LIEN* FOR ESTATE TAX.—~~Except as otherwise provided in subsection (c) (relating to transfer of securities)—~~

~~(1) UPON GROSS ESTATE.—~~

Unless the estate tax imposed by chapter 11 is sooner paid in full, *or sooner becomes non-assessable or unenforceable by reason of lapse of time,* it shall *(except as otherwise provided in subsection (c))* be a lien for 10 years upon *the property includible in* the gross estate of the decedent, except that such part

of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. ~~(3) CONTINUANCE AFTER DISCHARGE OF EXECUTOR. The~~ *Except as otherwise provided in this section, the* provisions of section 2204 (relating to discharge of executor from personal liability) shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due.

~~(2) LIABILITY OF TRANSFEREES AND OTHERS.~~ [First sentence transferred to sec. 2205(a).] ~~Any part of such property transferred by (or transferred by a transferee of) such spouse, transferee, trustee, surviving tenant, person in possession of property by reason of the exersing, nonexercise, or release of a power of appointment, or beneficiary, to a bona fide purchaser, mortgagee, or pledgee, for an adequate and full consideration in money or money's worth shall be divested of the lien provided in paragraph (1) and a like lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, beneficiary, or transferee of any such person, except any part transferred to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money or money's worth.~~

~~(3) CONTINUANCE AFTER DISCHARGE OF EXECUTOR.~~—[First clause transferred to subsection (a), above], ~~unless such part of the gross estate, or any interest therein, has been transferred to a bona fide purchaser, mortgagee or pledgee for an adequate and full consideration in money, or money's worth, in which case such part (or such interest) shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser, mortgagee, or pledgee by the heirs, legatees, devisees or distributees.~~

(b) LIEN FOR GIFT TAX.—~~Except as otherwise provided in subsection (c) (relating to transfers of securities)~~, *Unless* the gift tax imposed by chapter 12 *is sooner paid in full, or sooner becomes non-assessable or unenforceable by reason of lapse of time, it* shall *(except as otherwise provided in subsection (c))* be a lien upon all gifts made during the calendar year, for 10 years from the time the gifts are made.

[(b) LIEN FOR GIFT TAX. First sentence re-enacted above. Second sentence transferred to sec. 2501(b).] ~~Any part of the property comprised in the gift transferred by the donee (or by a transferee of the donee) to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money or money's worth shall be divested of the lien herein imposed and the lien, to the extent of the value of such gift, shall attach to all the property (including after acquired property) of the donee (or the transferee) except any part transferred to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money or money's worth.~~

~~(c) EXCEPTION IN CASE OF SECURITIES.—The lien imposed by subsection (a) or (b) shall not be valid with respect to a security, as defined in section 6323(c)(2), as against any mortgagee, pledgee, or purchaser of any security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee or purchaser is without notice or knowledge of the existence of such lien.~~

(c) EXCEPTIONS.—

(1) LIENS AND INTERESTS PREFERRED REGARDLESS OF TIME.—The liens and interests described in subsection (o) of section 6323 shall, to the extent therein provided, have priority over the lien imposed by this section, regardless of when such liens or interests arise.

(2) PRE-EXISTING LIENS AND INTERESTS.—The liens imposed by this section shall not be valid against any purchase, lease, security interest or lien (as such terms are defined in subsection (p) of section 6323) which would have priority over a lien under section 6321 if notice thereof had been duly filed at the time the lien under this section arose.

(3) SUBSEQUENT LIENS AND INTERESTS.—The liens imposed by this section shall not be valid against any subsequent purchase, lease, security interest, mechanic's lien or landlord's lien, acquired for value, unless such interest or lien was acquired in bad faith (as such terms are defined in subsection (p) of section 6323); Provided, that, with respect to the lien under subsection (a) of this section, this paragraph shall not apply to a purchase of or security interest in—

(A) Real property included in the gross estate under section 2033, or

(B) Personal property, whether tangible or intangible (other than securities, as defined in subsection (p) of section 6323), while such property is under administration in the estate,

unless the executor has been discharged from personal liability pursuant to section 2204.

(4) TRANSFER OF LIEN. If a person who is liable under section 2205(a) for the estate tax, or who is liable under section 2501(b) for the gift tax, creates or suffers the creation of any lien or interest which has priority over a lien imposed by this section, a like lien, to the extent of the liability of such person, shall attach to all the property (including after-acquired property) of such person, subject to the provisions of this subsection. In any other case in which any lien or interest attains priority over the lien imposed by subsection (a) by virtue of paragraphs (1) or (3) of this subsection, a like lien shall attach to the consideration received by the heirs, legatees, devisees or distributees, subject to the provisions of this subsection.

(b) Section 2205 of the Internal Revenue Code of 1954 (relating to reimbursement out of estate) is amended by changing the title to "LIABILITY OF TRANSFEREES AND OTHERS," by designating the present language thereof as "(b) REIMBURSEMENT OUT OF ESTATE," and by inserting a new subsection (a) as follows (present language of present section 6324(a)(2) to be deleted is struck through; new matter is in italics):

(a) LIABILITY IMPOSED.—If the ~~estate~~ tax *herein* imposed ~~by chapter 11~~ is not paid when due, then the spouse, transferee, trustee (except the trustee

of an employee's trust which meets the requirements of section 401(a)), surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042, inclusive, to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax.

(c) Section 2501 of the Internal Revenue Code of 1954 (relating to imposition of gift tax) is amended by redesignating subsection (c) as subsection (d) and inserting after subsection (b) the following new subsection (new matter to be added to the second sentence of present section 6324(b), is in italics):

(c) LIABILITY OF DONEE.—If the tax is not paid *by the donor* when due, the donee of any gift shall be personally liable for such tax to the extent of the value of such gift.

Sec. 3. Release of Lien or Partial Discharge of Property

(a) Section 6325(b) of the Internal Revenue Code of 1954 (relating to partial discharge of property from lien) is amended by adding at the end thereof the following new paragraph:

(3) RECOVERY OF AMOUNT PAID.—An amount paid for a discharge of property from lien pursuant to paragraph (2) shall not be recoverable except—

(A) Pursuant to chapter 65 or section 7422, by the person against whom the assessment was made, if the tax was erroneously assessed or collected; or

(B) Pursuant to section 7431, by the person paying such amount (other than the person against whom the assessment was made), if such person accompanies such payment with written protest stating that he does not accept the determination of the Secretary or his delegate with respect to the validity or priority of the lien or interest of such person, in fixing the amount to be paid for such discharge, and if suit is commenced within the time prescribed in section 7431(c)(4).

(b) Section 6325 of the Internal Revenue Code of 1954 is further amended by striking subsections (d) and (e), and by inserting after subsection (c) the following new subsections (present language to be deleted is struck through; new matter is in italics):

(d) SUBORDINATION OF LIEN.—Subject to such rules or regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of subordination of any lien imposed by this chapter upon any part of the property subject to such lien if—

(1) OTHER LIEN OR INTEREST HAVING PRIORITY.—The Secretary or his delegate finds that the lien or interest of the person to whom the certificate is issued is superior to the lien of the United States under

the provisions of this subchapter, and such person establishes his need for such certificate;

(2) PAYMENT OF AMOUNT OF OTHER LIEN OR INTEREST.—There is paid over to the Secretary or his delegate an amount equal to the amount of the lien or interest to which the certificate subordinates the lien under this chapter, and the Secretary or his delegate finds that the ultimate collection of the tax liability will be facilitated by such subordination; or

(3) VALUE OF PROPERTY INCREASED.—The Secretary or his delegate believes that the amount realizable by the United States from the property to which the certificate relates, or from any other property subject to the lien, will ultimately be increased, with the aid of the issuance of such certificate, by an amount at least equal to the amount of the lien or interest to which the certificate subordinates the lien under this chapter, and the Secretary or his delegate finds that the ultimate collection of the tax liability will be facilitated by such subordination.

(e) NON-ATTACHMENT OF LIEN.—If the Secretary or his delegate finds that, by reason of confusion of names or otherwise, any person other than the taxpayer is or may be injured by the appearance that any notice of lien filed under section 6323 refers to such person, the Secretary or his delegate may issue a certificate that the lien does not attach to property of such person.

~~(c)~~ *(f)* EFFECT OF CERTIFICATE ~~OF RELEASE OR PARTIAL DISCHARGE~~.—A certificate of release or of discharge issued under this section shall be held conclusive that the lien upon the property covered by the certificate is extinguished. *A certificate of subordination issued under this section shall be held conclusive of the superiority of the lien or interest to which the lien under this chapter is subordinated by such certificate. A certificate of non-attachment issued under this section shall be held conclusive that the lien does not attach to the property of the person described in such certificate.*

(g) REVOCATION OF CERTIFICATE.—Notwithstanding subsection (f), if the Secretary or his delegate finds that any certificate under this section was issued erroneously or improvidently, he may revoke such certificate and reinstate the lien as of its original effective date by notice in writing delivered to the taxpayer and to the person to whom the certificate was issued, copies of which notice may be delivered to any person who the Secretary or his delegate believes may act in reliance upon the certificate. Such revocation of the certificate and reinstatement of the lien shall be ineffective against any person (other than the taxpayer) who in good faith has taken substantial action in reliance upon the certificate before he has actual notice or knowledge of the revocation. The Secretary or his delegate may avail of any appropriate process of the courts to compel the person in possession of a revoked certificate to surrender such certificate or to enjoin him from exhibiting it to any person. If such certificate has been filed or recorded in any office, the Secretary or his delegate shall file notice of the revocation in the same office.

~~(d)~~ *(h)* CROSS REFERENCES.—

(1) For a single bond complying with the requirements of both subsection (a)(2) and section 6165, see section 7102.

(2) For other provisions relating to bonds, see generally chapter 73.

(3) For provisions relating to suits to enforce lien, see section 7403.

(4) For provisions relating to suits to clear title to ~~realty~~ *property*, see ~~section 7424~~ *Title 28, United States Code, section 2410.*

(5) For provisions relating to judicial proceedings by non-taxpayers, see section 7431.

Sec. 4. Obligations of Taxpayer's Obligors and Bailees

Section 6332 of the Internal Revenue Code of 1954 (relating to surrender of property subject to levy) is amended to read as follows (present language to be deleted is struck through; new matter is in italics):

SEC. 6332. ~~SURRENDER OF PROPERTY SUBJECT TO LEVY.~~ *OBLIGATIONS OF TAXPAYER'S OBLIGORS AND BAILEES.*

(a) REQUIREMENT.—Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Secretary or his delegate, surrender such property or rights (or discharge such obligation) to the Secretary or his delegate, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process, *and such part thereof as is subject to the defenses and set-offs permitted by subsections (c), (d) and (e). A levy shall extend only to property possessed and obligations existing at the time thereof, and not to property thereafter acquired or obligations thereafter arising.*

(b) PENALTY FOR VIOLATION.—Any person who—

(1) fails or refuses to surrender as required by subsection (a) any property or rights to property, subject to levy, upon demand by the Secretary or his delegate, *or*

(2) prior to levy, disables himself from making such surrender by making payment or delivery in bad faith (as defined in section 6323(p)(8)) or acquires a set-off or defense which is not valid under subsection (d),

shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes for the collection of which such levy has been made, together with costs and interest on such sum at the rate of 6 percent per annum from the date of such levy. *Amounts collected as penalty and interest under this section shall be credited to the account of the tax assessment for the collection of which such levy was made; and, notwithstanding any judgment, such penalty and interest shall not be collected if and to the extent that it would result in collection of an aggregate amount in excess of such assessment, with costs and interest thereon.*

(c) *PRIOR PAYMENT OR DELIVERY.—Payment or delivery to or for the account of the taxpayer prior to the time of the levy shall be a defense to*

liability under this section, unless such payment or delivery was made in bad faith as defined in section 6323(p)(8)).

(d) *SET-OFFS AND OTHER DEFENSES.—The liability of any person under this section shall be subject to any valid set-off or defense (other than the defense of payment or delivery as provided in subsection (c)), including any valid set-off or defense arising as a result of the levy, which, under applicable law (as defined in section 6323(p)(12)), such person might have maintained in an action commenced by the taxpayer at the time the levy was made or at the time such person's obligation to the taxpayer matured, whichever is later, unless such set-off or defense was acquired in bad faith (as defined in section 6323(p)(8); Provided, however, if such person is entitled, as a condition to payment or delivery, to require the physical production or surrender of any document (including, without limitation, a receipt, contract, passbook, stock certificate, security, negotiable instrument, warehouse receipt, bill of lading, or document of title), the failure of the United States to produce or surrender such document shall not be a defense to liability. In any such case, the United States shall defend, indemnify and hold harmless such person in possession or such obligated person against liability to any other person upon the document which is not produced, and against any reasonable and necessary expenses incurred in connection therewith. The benefit of such indemnity shall be forfeited if such person in possession or such obligated person fails (1) to give written notice to the Attorney General in accordance with regulations promulgated by the Attorney General, promptly upon the assertion, by action or otherwise, of any claim which is within the scope of such indemnity; (2) to cooperate with the Attorney General; (3) to permit the participation of the United States in any litigation concerning the matter; and (4) to refrain from conduct which prejudices the rights of the United States in any such proceeding.*

(e) CONFLICTING CLAIMS. The failure or refusal by any person in possession of property or rights to property to make a surrender thereof as required by subsection (a) shall not give rise to liability under subsection (b) if at the time of the demand by the Secretary or his delegate, such person in good faith asserts that an adverse claim exists to such property, and if within 30 days such person commences an action of interpleader or in the nature of interpleader to determine the rights of the United States and of the adverse party in such property.

~~(e)~~ *(f)* [Same as present subsection (c).]

Sec. 5. Set-offs and Other Defenses in Action to Enforce Lien or to Subject Property to Payment of Tax.

Section 7403 of the Internal Revenue Code of 1954 (relating to action to enforce lien or to subject property to payment of tax) is amended by inserting after subsection (d) the following new subsection:

(e) SET-OFFS AND OTHER DEFENSES.—In any such proceeding, a person obligated to the taxpayer may raise any set-off or defense permitted under subsections (c) and (d) of section 6332; Provided, that, if no levy was made, then (solely for the purpose of applying such subsections) a levy shall be deemed to have been made at the time of service by the United States upon such

person of a pleading demanding the relief provided by this section; Provided further, that, if the making of an election by the taxpayer is a condition to the obligation of such person to make payment, the failure of the taxpayer to make such election shall not be a defense to liability hereunder. The provisions of section 6332(d) with respect to indemnification in the event of failure to produce or surrender a document shall be applicable hereunder and shall apply also in the case of the failure of the taxpayer to make an election. This subsection shall also apply when the United States, in any action in which it is named as a party, asks affirmatively for foreclosure of a lien existing under this title.

Sec. 6. Proceedings by Non-Taxpayers.

(a) Chapter 76 of the Internal Revenue Code of 1954 (relating to judicial proceedings) is amended by redesignating Subchapters C, D, and E as Subchapters D, E and F, respectively, and inserting after Subchapter B the following new subchapter:

SUBCHAPTER C—PROCEEDINGS BY NON-TAXPAYERS

SEC. 7431. COLLECTION FROM PROPERTY OF THIRD PARTY.

(a) SUIT PERMITTED.—A civil action may be filed against the United States in the district court having jurisdiction thereof, by any person (other than the person against whom an assessment is made) who has or had a lien upon or interest in property (including money or obligations), if—

(1) A levy upon such property has been made or is threatened, or a lien is asserted under this title, which would prejudice the lien or interest of such person;

(2) Such property has been delivered to the Secretary or his delegate with or without levy, by a person having no right to do so;

(3) Such property has been sold pursuant to levy, and such person's lien or interest has been transferred to the proceeds of sale; or

(4) An amount has been paid under protest for discharge of a lien from such property, as provided in section 6325(b)(3)(B).

There may be joined or added as parties any persons whose rights may be affected by the adjudication, and such parties (other than the person against whom an assessment is made) may ask any relief provided by this section.

(b) ADJUDICATION.—The district court shall have jurisdiction to grant such of the following forms of relief as may be appropriate in the circumstances:

(1) DECLARATORY JUDGMENT.—A declaratory judgment concerning the claims to or liens upon the property in question.

(2) INJUNCTION.—An injunction prohibiting or quashing a levy upon the property or prohibiting a sale thereof, but only if and to the extent that such levy or sale would unlawfully impair rights which are determined to be superior to the rights of the United States in the property.

(3) RECOVERY OF PROPERTY.—A judgment for the specific recovery of property (other than money), or for the amount of money, which

is determined to have been wrongfully seized or wrongfully demanded and paid for the discharge of a lien.

(4) RECOVERY OF VALUE OF PROPERTY.—A judgment for the value of the property, or of the interest of any party therein, if the property was lost, materially injured or destroyed while in the custody of the United States, or if the property was unlawfully sold and the plaintiff is unable to recover it from the purchaser or from any other person.

(5) LIEN TRANSFERRED TO SALE PROCEEDS.—A judgment for the amount of all or part of the proceeds of sale of property, if the lien or interest of any party to the action was transferred to such proceeds.

(6) ENFORCEMENT OF LIEN OF UNITED STATES.—A decree granting relief as provided in section 7403, if the United States asks affirmatively therefor and if the necessary parties have been joined.

(c) TIME FOR COMMENCEMENT OF SUIT.—A suit under this section may be commenced—

(1) BEFORE APPLICATION UPON TAX LIABILITY.—At any time before the application upon a tax liability of money or the proceeds of property in or upon which an interest or lien is claimed; or

(2) AFTER APPLICATION UPON TAX LIABILITY.—Except as provided in paragraphs (3) and (4), within one year following the application upon a tax liability of money or the proceeds of property in or upon which an interest or lien is claimed.

(3) EFFECT OF NOTICE TO COMMENCE SUIT.—If the Secretary or his delegate ascertains that any person claims a lien upon or interest in money which has been applied, or upon or in other property the proceeds of which have been applied, upon a tax liability, the Secretary or his delegate may serve notice upon the claimant to commence a suit under this section. If such claimant does not commence suit within 60 days after actual delivery to him of such notice, his right of action under this section, and any other right of action against the United States or against any officer or employee of the United States (or former officer or employee) or his personal representative for relief which could be obtained against the United States under this section shall be barred (if not sooner barred under paragraph (2)). This paragraph shall not apply to the recovery of a payment made for a discharge of lien.

(4) PAYMENT FOR DISCHARGE OF LIEN.—If payment made for a discharge of lien pursuant to section 6325(b)(2) is accompanied by a protest under section 6325(b)(3)(B), suit shall be commenced within 60 days after such payment.

(d) PROVISIONS NOT APPLICABLE.—The provisions of section 7421 and of section 7422(a) shall not be deemed applicable to actions under this section.

(e) LIEN PRESUMED VALID.—For the purposes of adjudication under this section (unless the United States asks, by way of affirmative relief, for the

foreclosure of its own lien), the assessment of tax upon which the lien of the United States is based shall be conclusively presumed to be valid.

(f) OTHER RIGHTS OF ACTION.—Except as provided in this subsection, this section shall not impair any right of action which might be maintained under section 2410 of Title 28, United States Code, or any other right, existing at common law or in equity, to sue any officer or employee of the United States (or former officer or employee) or his personal representative with respect to any acts or threatened acts, whether or not an action therefor might be maintained under this section. No such other action shall be commenced after expiration of the times prescribed in subsection (c), except for relief which could not be granted against the United States in a suit under this section. Any such action against a defendant other than the United States shall be treated as if the United States had been a party, for purposes of applying the doctrine of res judicata, unless such action is determined upon grounds peculiarly applicable to the person named as defendant therein. If any action which might have been brought against the United States under this section is determined to have been improperly brought against any other person referred to in this subsection, the action shall not be dismissed on that account, but the court shall order that the United States be made a party, as of the time the action was commenced, upon such terms as are just.

(b) Section 7424 of the Internal Revenue Code of 1954 is hereby repealed. Any actions pending thereunder on the date of enactment of this Act shall proceed under section 7431.

(c) Section 1346(a) of Title 28, United States Code, is amended by redesignating paragraph (2) as paragraph (3) and inserting after paragraph (1) a new paragraph as follows:

(2) Any civil action against the United States as provided in section 7431 of the Internal Revenue Code of 1954, as amended.

Sec. 7. Effective Date.

Except where the lien of the United States has been enforced by a proceeding, suit or civil action which has become final by judgment, sale or agreement before the date of enactment of this Act, this Title shall apply regardless of when the lien of the United States arose or the lien or interest of any other party was acquired; provided, that this Title shall not impair a priority enjoyed by the holder of any private lien or interest prior to the enactment of this Act, nor shall it operate to increase the liability of any person or to shorten the time for bringing suit with respect to transactions occurring before its enactment. In the case of any bond to secure the payment of taxes, given to the United States before the date of enactment of this Act, if the amount recoverable by the surety pursuant to its right of subrogation to the lien of the United States, where such right exists, is reduced as a consequence of the provisions of this section, the United States shall indemnify the surety to the extent of such reduction, but the obligation of the bond shall not otherwise be affected.

Technical Explanation of Title I

SECTION 6323. PRIORITY OF LIENS

SECTION 6323(a). SECURITY INTERESTS

Priority. Proposed § 6323(a)(1) restates the present priority of mortgagees and pledgees over unfiled federal tax liens. However, by the use of certain terms defined in proposed subsection (p) (which are discussed at this point for the sake of clarity), the effect of present decisions is intended to be overcome.

''Security interests'' defined. The term ''security interests,'' which is defined in proposed § 6323(p)(1), is substituted for ''mortgagee'' and ''pledgee'', found in present law, in order to make clear that protection is not confined to conventional mortgages and pledges but extends to all forms of contractual security devices entered into on the faith of the taxpayer's property.

''Value'' defined. It is further prescribed that such ''security interest'' must be ''acquired for value.'' Rather than leave the meaning of ''value'' to state law (under which it might mean ''any consideration sufficient to support a simple contract,'' including a nominal consideration), ''value'' is defined in proposed § 6323(p)(7) to mean ''an adequate and full consideration in money or money's worth, given or to be given.'' Such terminology is familiar in present law (I.R.C. §§ 2043(a), 2512(b), 6323(c)(1), 6324(a)(2) and (3), 6324(b) and (c)), and has been so construed that *bona fide* arm's length transactions in the ordinary course of business will not be upset. See Regulations § 301.6323-1(b)(1). The Supreme Court has approved a like construction of the term in the gift tax regulations. *Commissioner* v. *Wemyss.*

Antecedent consideration. Proposed § 6323(p)(7) provides that an antecedent consideration shall be ''value'' except where an existing creditor takes security with actual knowledge of an unfiled federal tax lien on the property (thus overturning decisions which have permitted preferences to existing creditors where the unfiled lien was known).

''Effective'' defined. The priority of a ''security interest'' is proposed, with certain exceptions, to be made dependent on when it ''becomes effective.'' Under proposed § 6323(p)(6), a security interest (as well as certain liens discussed hereafter) is deemed ''effective'' when the event has occurred as of which, under state law, it has priority over other third parties acquiring liens or interests for value, with or without notice, either generally or with exceptions, whether the obligation secured is fixed, conditional or not yet incurred, and regardless of the need for further action to complete, perfect, maintain or enforce the interest (if such action is thereafter duly taken). This is intended to overturn the rule of *United States* v. *Ball Construction Co.*, which applied to contractual security interests the already overextended concept of the ''inchoate'' lien. In lieu of that concept, certain express restrictions (relating to future advances and after-acquired property) would be provided, as discussed below.

Unrecorded interests. The foregoing definition makes clear that a security interest is not invalid against the federal tax lien merely because it is vulnerable to bona fide purchasers or creditors without notice (as some decisions have held it to be). The Government, in acquiring a tax lien, does not part with value

in reliance on the record title and is not the kind of creditor the recording acts were designed to protect. See dissent of four Justices in *Ball Construction Co.* The proposal would confirm the long-time administrative position of the Government (contrary to its position in litigation) that recording of the lien which is competing with the federal tax lien is unnecessary. However, because of the greater chance of fraud when priority is claimed under an unrecorded instrument, proposed § 6323(h) places the burden of proving the date of execution and the giving of value on the person so claiming.

Security for future obligations. Under proposed § 6323(a)(2)(A)-(D), certain categories of security for future obligations would be entitled unconditionally to the same priority they enjoy under state law, free of the arbitrary standard of "choateness" applied by the Supreme Court in the *Ball Construction Co.* case. These are:

(1) Security for obligatory future advances.

(2) Indemnity against a loss or liability the incurring of which is beyond the control of the person secured (*e.g.*, the surety in the *Ball* case, which was obligated on the bond before but did not suffer a loss until after the tax lien was filed, and whose security was called "inchoate" by the Supreme Court.)

(3) Security for a single public issue of bonds (which technically involves advances which are optional with the purchasers, but which, for obvious reasons, are uniformly excepted from state law rules governing optional advances). The term "public issue" is undefined, but is intended to cover situations where the actual lenders are not expected to make their own title search but must rely on that made by the trustee. Where there is more than one series of bonds under an open-end mortgage, however, the requirements (below) respecting optional advances will apply.

(4) Security for future advances which, while not strictly obligatory (*e.g.*, because of "escape clauses"), are nevertheless "necessary" to complete something that has been started and thus avoid sacrifice of the security (*i.e.*, construction, crop and livestock loans, and loans for the acquisition or production of inventory or the performance of a contract). Priority over an intervening federal tax lien (except where the advances are obligatory) is conditioned upon some credit already having been extended for the purpose, and upon the subsequent advances being "actually used to continue or accomplish the same purpose." Any state law requirements, such as the specification of a maximum amount of loans in the instrument, would also have to be complied with. Sec. 6323(a)(2)(D). [Note: The Committee gave consideration to imposing a requirement that "substantial" consideration shall have been disbursed or delivered, or "substantial" liabilities incurred, before the federal lien is filed, in order to entitle the lender, under this provision, to complete the advances with priority over the intervening tax lien. The vagueness of the term "substantial", however, has given much trouble elsewhere in the tax law, and would do so here. One who had advanced $50,000 on a $1,000,000 project, before a large federal tax lien was filed, would not know whether he could safely complete the advances and salvage his initial outlay, or whether he must cut off the advances and perhaps lose his $50,000. Such lenders would also be required

to continue searching for federal liens until the indefinite time when their loans became "substantial." No satisfactory objective test (in terms of absolute amount or percentage of the total loan) was discovered. Therefore such requirement is not proposed to be imposed. It is expected, however, that the courts would apply a *de minimis* rule to prevent obvious abuse.]

In cases not falling within those classifications—in general, truly optional advances under open-end mortgages or lines of credit on inventories and accounts receivable,—the proposal would impose an additional requirement, over and above those imposed by state law. In a majority of States, the holder of security for optional future advances is protected against intervening liens of which he does not have *actual* notice, and he is not bound to search the record for such liens before making additional advances. Under the principle of the *Ball* case, however, repeated searches for federal tax liens would be necessary. See also Revenue Ruling 56-41. In order to spare lenders (especially those granting lines of credit that may fluctuate almost daily) the burden of repeated searches for tax liens, and at the same time to spare the District Director the impossible burden of searching county or state records whenever he files a tax lien, it is proposed in § 6323(a)(2)(E) to give the Director a record of such arrangements within his own office. A lender who wishes to be relieved of the burden of repeated searches would give express notice to the Director, and the lender could then make further loans in conformity with the arrangement without fear of intervening federal tax liens unless the Director expressly notified him of the filing of such liens (or unless a responsible person acting for the lender in the transaction acquired actual knowledge thereof). If, for any reason, a lender did not desire to advise the Director of the arrangement, he could refrain from using the procedure, and could rely on his own search for filed tax liens before each advance.

One holding a lien or interest junior to that of the holder of the security for optional future advances would also be entitled to give notice of the arrangement. The reason for this is that, if the holder of security for future advances fails to give the notice herein provided, it may occasionally result in injury to the holder of a junior lien, by operation of the "circular priority" rules (hereafter discussed under § 6323(m)). The junior lienor may partially protect himself by giving the notice which the maker of the optional advances failed to give.

To eliminate the need for giving such notice in many instances where disbursement of the loan may follow execution of the security interest by a few days, lenders would be protected without notifying the Director, as against federal tax liens filed after the financing arrangement becomes "effective", if the consideration is delivered within 30 days. To give the Director time to process a notification and pass the word to branch offices, the notification by the lender would not give him effective protection for the first 15 days. If advances are made in the interim, but after the first 30 days, the lender can protect himself by watching the tax lien files; but the diligent creditor will be free of that difficulty, since the 30 day rule will protect him. The effectiveness of the notice would expire after one year (in order to enable keeping the files free of deadwood). All these time limits are proposed only in principle, and may be altered to suit the practical needs.

To defray the expense of the Director in maintaining the file, searching it, and notifying lenders of tax liens, a fee is proposed to be charged when the

Director is notified of the financing arrangement. The amount of the fee, the information required in the notice, and the office with which it should be filed, would be prescribed by the Treasury.

If it should be found that the proposed procedure would be too great an administrative burden on the Treasury, despite the imposition of a fee, consideration might be given to its adoption on a more limited scale, rather than giving no relief at all for transactions of increasing importance. The procedure might be limited to commercial financing, where it is most needed (because of the impracticability of continuous record searching), thus excluding the ordinary open-end real estate mortgage, on which further advances would be infrequent and the making of a new check for federal tax liens before each advance might be less burdensome for the lender.

After-acquired property. Proposed § 6323(a)(3) protects security interests in after-acquired property, but imposes certain restrictions thereon. The federal tax lien is effective automatically upon after-acquired property *(Glass City Bank* v. *United States),* and at present prevails even over previously recorded security interests in such property, whether the latter relate to future advances or are substituted security for a prior debt. *United States* v. *Phillips.* The proposal would not open the door to pledges of future earnings to the exclusion of liens for the taxes thereon, or to blanket mortgages on all the taxpayer may acquire. But if a security interest in after-acquired property would otherwise have priority over the tax lien, under state law and the proposed legislation, it would be recognized (as against property acquired after the tax lien is filed) in the case of: (1) property (including money) the acquisition, production or earning of which was financed, or the surety bond for which was obtained, upon the security of the security interest (*e.g.*, crops, construction or contract proceeds); (2) property which is attached to and physically becomes an integral part of the property subject to the security interest (*e.g.*, a new roof or a boiler, even if not financed by the mortgagee); and (3) property substituted for other security (*e.g.*, inventories, accounts receivable, or railroad rolling stock). In the third case, the priority is limited to the extent necessary to maintain unimpaired the value of the security as of the time the tax lien was filed, adjusted for the net amount of any later advances for which the lender is entitled to priority under paragraph (2) (in the same ratio which the security bore to the debt when the tax lien was filed); but a presumption favors the lender if replacement of inventory or equipment occurs in the ordinary course of business.

Section 6323(b). Purchasers and Lessees

Section 6323(a) of present law protects "purchasers" from unfiled federal tax liens, but does not specify when one becomes a purchaser. In *Leipert* v. *R. C. Williams & Co.*, it was held that a contract purchaser of a house who has not taken title, although he has made payments and is in possession, is not protected as a "purchaser", even against after-arising federal tax liens. Although many state recording acts likewise deny "purchaser" status to one who has not taken title, the effect is mitigated by giving him a lien for payments made under the contract. But the *Leipert* case denied even that relief, on the ground that the vendee's lien was "inchoate." Under the definition of "purchaser" in proposed § 6323(p)(2), it is proposed to give a contract purchaser the same protection as one who has taken title (rather than following the usual state law rule

which would deprive the innocent party of the benefit of his contract and refund his money, after which the property would be sold at forced sale, probably for less than the contract price).

Like protection would be extended, by virtue of the definition in proposed § 6323(p)(2), to a holder of an option to purchase, who (even though he is not himself bound) may have made commitments in reliance on the option, in ignorance of an unfiled tax lien.

Abuses of the foregoing provisions would be prevented by several means. The purchaser must give ''value'', the meaning of which has been heretofore discussed under ''Section 6323(a). Security interests.'' Therefore, an antecedent consideration would suffice only under stringent conditions. An option would be deemed acquired for ''value'' if the amount prescribed to be paid in order to acquire the property pursuant to the option would constitute ''value.'' As hereafter discussed, if the purchaser or optionee acted in bad faith with intent to defeat the lien, he would not be protected even if the lien was unfiled (§ 6323(l)). Furthermore, if, knowing of the lien and with intent to defeat collection, he pays the price to the seller, he may incur liability under proposed § 6332(c).

Proposed § 6323(b) would also extend to lessees and the holders of lease options the same protection accorded purchasers, in order that the holder of a valuable leasehold, entered at arm's length for ''value'', may not be evicted under a prior unfiled federal tax lien.

If the instrument under which a purchaser or lessee claims is not recorded, subsection (h) would impose on him the burden of proving its date, and that it was acquired for ''value.''

Section 6323(c). Mechanics' Liens

Proposed § 6323(c) would change the result reached in four Supreme Court decisions *(Colotta, White Bear Brewing Co., Vorreiter* and *Hulley)* which left a mechanic lienor unprotected against a federal tax lien, whether the latter arose during the work or at any time thereafter, until the mechanic reduced his claim to judgment. Although the wording and arrangement have been changed to fit into the present more comprehensive proposal, the practical effect is the same as that of the recommendation of the Section of Taxation adopted by the House of Delegates in July 1957. However, subsection (c) is limited to mechanics' liens on real or immovable property. The matters of mechanics' liens or claims on contract proceeds, and of artisans' liens on personal property, which were included in the 1957 proposal, are separately dealt with in subsection (o), hereafter discussed.

A mechanic is defined in proposed § 6323(p)(5) in terms broad enough to cover anyone who contributes to a project on real or immovable property, by rendering services or supplying materials, equipment, transportation or power, to whom a lien is granted by law, whether the lien is covered by the State's mechanic's lien law or is separately conferred under another name.

A mechanic lienor would be added to the four classes now protected against secret, unfiled federal tax liens, since he is a creditor who, like a mortgagee, gives value in reliance on the apparent title. To prevail, the mechanic's lien must have become ''effective'' under applicable law before the federal tax lien is filed, and

the lienor must thereafter do whatever State law requires to complete, perfect, maintain and enforce his lien, within the times specified by law. But ''effective'' (as heretofore discussed under ''Section 6323(a). Security interests'') is defined in proposed § 6323(p)(6) in terms which permit relation back, under state law, to the commencement of the work, the making of the contract, or the filing of notice thereof—whatever the event may be as of which the mechanic's lien becomes protected against after-arising liens or interests of third parties. The date specified by state law is selected, rather than a uniform time, because the former is the time when the prospective mechanic lienor would normally check for prior liens on the property. However, it is *not* proposed to go further and relieve the mechanic lienor of the responsibility of checking for existing tax liens, by giving recognition to those state laws which prefer a mechanic lienor even over pre-existing mortgages and liens, to the extent of the value added by him.

In any case where the federal tax lien is filed before a mechanic's lien is filed in a public office, the burden of proof would, by proposed § 6323(h), be upon the mechanic lienor to show the date of commencement of the work, or other date when his lien became effective. Another restriction on the priority of mechanic's liens is discussed below in connection with subsection (i).

Section 6323(d). Judgments

Proposed § 6323(d) confirms the present priority of judgment creditors over unfiled federal tax liens, but clarifies certain matters which have given rise to litigation.

To qualify for priority under this provision, a judgment must have been rendered by a court in a judicial proceeding. Non-judicial liens for tax assessments, which some state laws give the effect of ''judgments'', would be excluded; regardless of the label applied, the priorities of state and local tax liens would be determined under subsections (f) and (o), discussed hereafter. In this respect, the proposal confirms the decision of the Supreme Court in *United States* v. *Gilbert Associates.* However, the Court's dictum that only judgments of ''courts of record'' are covered is not confirmed, since there appears no reason to discriminate against judgments rendered by lesser courts if, by docketing, they have become liens.

The proposal would also confirm existing decisions and rulings to the effect that a judgment creditor's priority is dependent upon his having obtained a lien (*Miller* v. *Bank of America*), but that a general lien will suffice, before it has been made specific by seizure. *Revenue Ruling 225.* The priority would date from the time the lien of the judgment becomes ''effective'' (as heretofore discussed under ''Section 6323(a). Security interests''), irrespective of the need for further perfecting action. However, priority under this subsection could not relate back to a date before a judgment is rendered, although it need not be a final judgment if a lien exists earlier. (Concerning attachment liens, see ''Other Liens'', below.)

It is proposed to expand existing law by extending the protection to judgments which are not for money but which determine liens or interests in property. In effect, this provision would make the rule of *lis pendens* applicable against the

Government, where the federal lien is filed after judgment. (Concerning the conditions proposed to be attached to the application of such rule if the federal tax lien is filed during the pendency of the action, see proposed amendment to section 2410 of Title 28, discussed under Title III, below.)

Section 6323(e). Landlords' Liens and Security Interests

Under the present "inchoate lien" rule, a landlord's lien is vulnerable to a subsequent federal tax lien (*United States* v. *Scovil*), and it is probable that a "chattel mortgage" clause in a lease would fare no better, since the *Ball Construction* case applied the same test to mortgages. If it is desired to provide protection for the lien or security upon which landlords rely in extending credit for rent, proposed § 6323(e) would provide it, subject to reasonable limits. The rules would be the same whether the landlord relies on a statutory lien or a contractual security interest.

The landlord would not be protected, in any event, unless he relies on a lien or security interest which is "effective" (as heretofore discussed under "Section 6323(a). Security interests") against other liens and interests as of a date before the federal tax lien is filed. Otherwise, the landlord is a mere unsecured creditor. Even in the case of such a lien or security interest, however, restrictions would be imposed. Priority would be granted with respect to rent or other obligations accruing before the tax lien is filed. After such filing, the landlord is in the position of one who extends future credit under an existing security, analogous to the situation dealt with in subsection (a)(2)(E). But, rather than impose on landlords generally the obligation to notify the Director of leases, the lien or security would be effective with respect to not more than three months' rent accruing after the filing of the federal tax lien; if the landlord lets the rent go delinquent for a longer period, he would have to watch the federal tax lien records. In the case of farm tenancies, where it may be reasonable or necessary to let the rent go until a crop is harvested, the limit would be one year. An exception to such time limits would be provided in the case of a pledge or deposit in the possession or control of the landlord, which could cover future rent for any period.

Where a landlord's statutory lien secures money advanced or goods delivered, it would be subject to the rules of subsection (a)(2) covering security for future obligations.

Section 6323(f). State and Local Taxes

State taxes (other than real property taxes) are frequently made liens on all the property used in the business, just as federal taxes are a lien on all property. But, whereas the federal tax lien is deemed "choate" and perfected, the comparable state liens are now treated as "inchoate". Proposed § 6323(f) applies a single standard to federal, state and local tax liens, by recognizing the priority of state and local taxes when they (1) have been assessed or otherwise determined and (2) have become "effective" as liens (as that term is heretofore discussed). To place all such liens on a parity, "relation back" of the lien to a date before assessment of the state or local tax would not be recognized. Furthermore, the priority of the federal tax lien would not be dependent upon

filing, since it is not proposed to require filing of the competing state or local liens and since they are not liens acquired in reliance upon the record title.

Real property taxes and special assessments are specially treated in subsection (o).

Other Liens

State laws provide a great variety of liens other than those expressly dealt with in subsections (c), (d), (e), (f) and (o). If no provision is made with respect to them, the "inchoate lien" doctrine would subordinate all or most such liens to subsequent federal tax liens. On the other hand, to give such statutory liens, by "blank check", the priorities they enjoy under state law against private creditors would subject the federal tax lien to state policies that may have no pertinence as between private and governmental liens. It was suggested in § 6323(g) of "Draft B", set out in this Committee's report of August 25, 1958, that a middle position be adopted, treating such statutory liens in a way analogous to their treatment in the bankruptcy amendments (H.R. 5195, 85th Congress) recommended by the Association in 1957. It was thought that, if a state-created lien is so far perfected that it would prevail over a bona fide purchaser (other than a purchaser in the ordinary course of trade), it sufficiently partakes of the nature of a property right to be recognized against a federal tax lien arising later.

However, the Committee has concluded that, rather than jeopardize the chance of obtaining relief in the more serious situations expressly dealt with, it should not recommend a broad catch-all provision, but should leave the problem of broadening the relief to be dealt with in the light of future experience.

Among those who would have been protected under "Draft B," but not under the final recommendation, are attaching creditors, who under current law are subordinate to after-arising federal tax liens. *United States* v. *Acri.* Attaching creditors seldom, if ever, have extended credit in reliance on the security of the property attached, hence their equitable position is hardly comparable to that of mechanics, mortgagees and the like. However, since the attaching creditor might be considered a "reliance" creditor to the extent that he incurs further expenses of litigation in the belief that he will be able to collect any judgment out of the attached property, the Committee gave consideration to providing for priority of the attaching creditor at least to the extent of expenses so incurred by him. It was concluded, however, that the provision would be too complicated to justify trying to cover the matter herein. The importance of the problem may perhaps be minimized in view of the fact that attachments are frequently lifted by giving bond, and the surety would take security which would be protected under subsection (a).

Section 6323(g). Interest and Expenses

Proposed § 6323(g) makes clear that interest and finance charges on an obligation enjoy the same priority as the principal debt, even if they accrue after the federal tax lien is filed. The same priority would be accorded the creditor's costs of enforcing the obligation, and insuring, physically preserving and repairing the property, where the law or valid agreement provides for

adding such costs to the lien. Recent decisions, influenced by the *Ball Construction* principle, have denied such priority. *In re New Haven Clock & Watch Co.*

The foregoing principle would not, however, go so far as to permit a mortgagee, by paying state or local taxes or other liens, to enlarge the amount of such taxes or other liens having priority over the federal lien. The State, which has no power to place a later lien ahead of the United States, cannot do so indirectly by placing such lien ahead of a mortgage which is ahead of the United States. If it attempts to do so, the burden is borne by the mortgagee (over whom the State has power) and not by the United States. *United States v. City of New Britain.* See proposed § 6323(m), below. The proviso in proposed § 6323(g) would prevent circumvention of that rule by the mortgagee's paying the claim and adding it to his prior lien. However, any hardship on mortgagees would be greatly mitigated by the proposed consent of Congress to priority of subsequent property taxes, in proposed § 6323(o)(11), discussed below, so that the problem is limited to other types of liens to which some States give ''super-priority''.

Section 6323(h). Unrecorded Interests

Whenever a purchaser, lessee, holder of a security interest or lienor did not record, register or file his interest in a public office before the federal tax lien was filed, the facts determining his priority are peculiarly within his knowledge. Therefore, the burden of proof is placed upon him, by proposed § 6323(h), to establish the ''effective'' date of his claim and the giving of ''value'', whenever such facts are material to his priority.

Section 6323(i). Special Rule for Taxes Withheld From Wages

The mechanic's lien proposal approved by the Association in 1957 provided an exception with respect to employment taxes arising out of the same job, on the theory that those are as much a part of the cost of the job as the claims secured by mechanics' liens, and that such taxes (which normally would be assessed and become liens after the mechanics' liens have become ''effective'') should not be the last claims satisfied. The need for further study was recognized, however, by the Section of Taxation in making the recommendation.

It is now thought that the Government's special priority over mechanics' liens should be limited to withholding taxes and the employee's share of the old age (F.I.C.A.) tax, which in effect have the status of unpaid wage claims, and the amount of which would be unavailable for other mechanics' lien claims if the employer had complied with the law and set aside the withholdings in trust for the United States.

The lien for such taxes required to be withheld would, under proposed § 6323(i), be preferred over a mechanic's lien on the realty (where the employer is the property owner), over the mechanic's or a surety's claim on the contract proceeds, and over any security interest, lien, judgment, attachment, garnishment or *lis pendens* existing with respect to such a claim; and also over any lien or interest over which they have priority. However, since the wage claimant himself has already suffered reduction of his past wages by the withholding of the

tax, which was not paid over, claims for unpaid wages would not be subordinated to the lien for withholding taxes (except where the state law treats wages on a parity with other mechanics' liens and it would not be feasible to place the federal claim behind wages but ahead of the others).

SECTION 6323(j). SUBROGATION

Proposed § 6323(j) makes clear that anyone who is entitled to subrogation (by statute, in equity or by contract) stands in the shoes of the person to whom he is subrogated, as against the federal tax lien.

SECTION 6323(k). FILING OF NOTICE OF LIEN

Proposed § 6323(k) continues the present rule that filing of notice of the tax lien is not mandatory nor is it essential to the priority of the lien except as against certain specified parties. The provisions in paragraph (1) with respect to the office for filing the notice, and of paragraph (2) with respect to the form of the notice, are essentially the same as subsections (a) and (b) of present § 6323. A minor clarifying change in the former is to substitute ''office or offices'' for the word ''office'', to make clear that the States may designate, for example, an office in each county, or separate offices for real and personal property.

Subsection (k)(3) is an attempt to give meaning to the word ''situated'', found in present § 6323(a) and in many state laws enacted in conformity thereto. The decisions are in confusion on whether domicile or physical location is the test. The proposal would look to the physical location in the case of real property and most tangible personal property. Registered vessels of the United States would be deemed situated at their home ports. Other personal property which has no regular location, as well as all intangibles (whether or not their ownership is represented by a document) would be deemed situated at the taxpayer's residence. Since some state laws, like the law of New York, require filing against tangible personal property at the residence of the owner, to conform to their rules on the filing of chattel mortgages, such requirement would be permitted by § 6323(k)(3)(F), with respect to property physically located in the State.

''Residence'' is an impractical standard in the case of a corporation, if it is construed to mean the State of incorporation, which may be far from the actual scene of its activities. The term also creates problems in the case of property of a partnership, whose partners may reside in different jurisdictions. Proposed § 6323(k)(3)(E), therefore, provides that the residence of a corporation or partnership is where its principal executive office is located.

Subsection (k)(4) provides for the expiration of the effect of the filed notice in certain circumstances. Although normally a federal tax lien expires in six years, its effectiveness may be extended considerably beyond that time as a result of waivers of the statute of limitations, or under various provisions of law having similar effect. Thus, a third party dealing with the taxpayer can never be sure that he can limit his search to liens filed in the past six years. It is proposed to provide that the filing of a tax lien shall be ineffective after six years from the assessment, unless the notice is re-filed. It would be required

that a statement of the date to which the time has been extended be included in the re-filed notice. Where the extension is indefinite (as in the case of an extension for the duration of consideration of an offer of compromise, which is still open when the notice is re-filed), that fact would be stated in the re-filed notice. The effect of the re-filed notice would expire at the time stated, or in six years if no time is stated.

Re-filing, in another jurisdiction, would also be required if personal property ceased to be regularly kept in the jurisdiction where the lien is filed, or (where residence is the test of where the notice of lien shall be filed) if the taxpayer changed his residence. At present, once a tax lien is properly filed at the situs of property, the lien follows the property wherever it may go, even though third parties may have no way of knowing its past history. Following the precedent of many chattel mortgage and conditional sale recording laws, the proposal would require the Director to re-file, but would give him a year to learn of the removal and take action.

SECTION 6323(l). EFFECT OF KNOWLEDGE OF UNFILED LIEN

Proposed § 6323(l), in conjunction with the definition of "bad faith" in § 6323(p)(8), would leave undisturbed the rule of *United States* v. *Beaver Run Coal Co.* to the effect that a mortgagee (or purchaser) is protected against an unfiled federal tax lien even if he has knowledge of it. The proposal is based on the assumption that, if the District Director does not file the tax lien, he contemplates that the taxpayer will continue to obtain credit and dispose of property in the normal course, and thereby earn money to remedy his tax delinquencies. Some decisions, however, have gone further and have preferred, as against a known but unfiled federal tax lien, related or friendly parties who bought or took mortgages upon the taxpayer's property in order to enable him to turn it into cash before the tax lien is filed. Proposed § 6323(l), where the purchase is made, the mortgage is taken or a judgment is obtained in bad faith with intent to hinder, evade or defeat collection of the tax (and such purpose is held by or known to the purchaser, mortgagee or judgment creditor), would treat the federal tax lien as if it had been filed. However, if such rule were applied after third parties have acquired liens or interests in good faith, serious inequities to innocent parties might result. Such situations are dealt with in subsection (m).

SECTION 6323(m). CIRCULAR PRIORITY AND RELATED MATTERS

General Rules

Proposed § 6323(m) provides a general rule for the resolution of problems of "circular priority". These problems arise in cases where A has priority over B, who has priority over C, who has priority over A. Such situations have long been familiar under state law. They arise, for example, where an unrecorded first mortgage is valid against a second mortgagee with knowledge of the existence of the first mortgage but is invalid against a subsequent (third) mortgagee who did not know of the unrecorded first mortgage.

Comparable situations may arise under the proposed federal lien statute, since an unrecorded mortgage, if duly established (see § 6323(h)), would prevail over the federal tax lien but would be invalid against a later innocent mortgagee

or purchaser, who is subordinate to the federal lien filed in the interim. Furthermore, since State laws frequently confer ''super-priorities'', by which certain favored liens (such as State and local tax liens, mechanics' liens, landlords' liens, etc.) are preferred even over antecedent liens on the property, circular priorities inevitably arise, unless the Federal Government bows to the States' policies of ''super-priority'', which, of course, are not uniform. The most serious and most frequent cause of such situations will be completely eliminated if proposed § 6323(o)(11)) is adopted, granting real property taxes priority over antecedent federal tax liens. A few other potentials for ''circular priority'' will remain, however.

In general, ''circular priority'' problems are resolved in the following manner: When the contest over the proceeds of sale of property is between a federal tax lien and two competing liens existing under State law (only the junior of which is entitled to priority over the federal tax lien under federal law), the present formula is, *first,* to apply the federal law of priorities in allocating a share of the proceeds to the competing lien which the federal law recognizes as superior to the federal lien and, *second,* then apportion that allocated share between the two competing non-federal lienors according to their priorities *inter sese* under state law.

For example, certain States make their non-property taxes a ''first lien'', ahead of all other liens (except, in certain States, mortgages). Suppose the liens became effective in the following order of time:

First: (A) Mechanic's lien	$15,000
Second: (B) Federal income tax	20,000
Third: (C) State income tax	5,000
Total liens	$40,000

Suppose also that only $21,000 is realized on foreclosure.

The Supreme Court's solution to the dilemma recognizes both the State's intent to prefer C (the State income tax lien) and the State's lack of power to impair the position of B (the federal tax lien). The Court holds that no more than the *amount* of A's lien can be given preference over the federal tax, and that, if the State chooses to prefer C to A, C's payment must be taken from the share set aside for A. *United States* v. *City of New Britain.* In the example, $15,000 (the amount of the mechanic's lien) would first be set aside, and the $5,000 preferred claim of the State would be taken from the mechanic's share, leaving for the federal tax the same $6,000 it would have had if the subordinate State claim had not existed.

Proposed § 6323(m)(2) would confirm that rule, expressing it in terminology adapted from a draft of Uniform Real Property Lien Priority Act, now under consideration by a committee of the Commissioners on Uniform State Laws, and originally proposed in Benson, ''Circuity of Liens—A Problem of Priorities'', (1935) 19 Minn. L. Rev. 139. In general, in a circular priority situation, the United States would receive its ''expected sum'', which is simply the amount left after subtracting from the available fund the amount of all liens having priority over the United States. Liens subordinate to the federal lien would be

disregarded in this computation, even though they have priority, under state law, over the lien which is ahead of the federal lien.

Inequity will result from the reduction of A's share in order to satisfy C's lien. That is an inequity which results, however, from the policy of state law which has granted a superiority to its own state income tax liens, moving them ahead of other liens which came first in order of time, and should be corrected by appeal to State Legislatures. If it is the policy of the State to grant "super-priorities," moving them ahead of other liens which came first in order of time, the burden should fall on those who are subject to state control; and the State, by giving a subsequent lien preference over a lien which is prior in time to the federal lien, should not be permitted to cause the lien which is junior-in-time to the federal lien to be satisfied ahead of the federal claim.

It is true that, in some instances, the *New Britain* rule, as codified in proposed § 6323(m)(2), will enable the State (or other claimant to "super-priority") to "trade" on the priorities of those equitably entitled to priority over the federal tax lien. In the above example, the State's "expected sum", which it would receive if there were no prior mechanic's lien, is $1,000 ($21,000 proceeds, less the prior federal lien of $20,000). By "trading" on the mechanic's priority over the federal lien, however, the State will take $5,000 from the mechanic's share. This is so, however, simply because the State has decided, as a matter of policy, to move a junior-in-time lien ahead of earlier-in-time liens in its own priorities system.

Another example will further illustrate both the operation of proposed § 6323(m) and the "trading" on priorities, in a situation not involving "super-priority". Suppose liens arise in the following order:

First: (A) Unrecorded first mortgage	$15,000
Second: (B) Federal income tax (filed)	20,000
Third: (C) Recorded second mortgage	5,000
Total	$40,000

Suppose the proceeds are $21,000. The Government's "expected sum" of $6,000 would be paid to it ($21,000 less the prior unrecorded mortgage of $15,000 which has priority over the federal tax lien under the recommended draft legislation). Since under state law the second mortgage is superior to the unrecorded first mortgage, the second mortgage would take $5,000, leaving $10,000 for the first mortgage. Yet all the second mortgagee could equitably have expected out of the proceeds, if the unknown first mortgage did not exist, would be $1,000 ($21,000 less the prior filed federal lien of $20,000). In taking $5,000 at the expense of the first mortgage, the second mortgagee "trades" on the priority of the first mortgagee over the federal lien.

Suppose, in the foregoing example, that "A" was a purchaser who failed to record, rather than a mortgagee who failed to record. Again "C" would "trade" on "A's" priority over the federal lien. The purchaser, if he meets his burden of proof under § 6323(h), would have priority over the United States, and the Government's "expected sum" would be zero. The mortgagee (C) would recover his $5,000 claim against the taxpayer at the expense of the unrecorded purchaser,

although C's "expected sum" (the amount he would have recovered, behind the filed federal lien, if A did not exist) was only $1,000.

Since, under this rule, the United States receives all it had any right to expect from the property, it perhaps should be unconcerned about inequities as between other claimants to the property, whose rights among themselves are governed by state law. Some suggestion has been heard, however, that, when the Government voluntarily cedes (on equitable grounds), to a mechanic or the holder of an unrecorded interest, priority over the federal lien, it should want some assurance that the benefit of its concession will inure to the person equitably entitled thereto, and not to another. The only completely effective remedy for that problem of trading on priorities would have to come from state legislation, which might be as follows:

> "Whenever any lien, claim or interest in property is entitled to priority over or equal priority with a lien or claim of the United States but is subordinate to any lien, claim or interest, existing under the laws of this State (herein referred to as a preferred lien, claim or interest), which preferred lien, claim or interest is subordinate to the lien or claim of the United States, then that portion of the fund subject to liens or claims, which is available for distribution with respect to those particular liens, claims or interests, shall be distributed as follows:
>
> (1) There shall be paid to the United States that portion of the fund to which it is entitled on the basis of its relative priority under the laws of the United States.
>
> (2) There shall be distributed with respect to each preferred lien, claim or interest the amount to which the holder of each such lien, claim or interest would be entitled on the basis of the priority of his lien, claim or interest with respect to the other liens, claims or interests, disregarding the priority of the other liens, claims or interests with respect to each other.
>
> (3) The remaining liens, claims or interests shall be satisfied from the balance of the fund, in order of their priority under the laws of this State."

[NOTE: Since the States themselves, under their "super-priority" statutes, are the principal beneficiaries of such "trading" on priorities, they might be reluctant to legislate against it. In § 6323(k) of "Draft B", set out in the Committee's report of August 25, 1958, federal legislation was suggested (a refinement and broadening of a provision recommended by the Association in 1957, with respect to mechanics' liens). It would not itself have achieved an equitable solution, although it would have encouraged state action, since it would have had the dual effect of preventing the States (or others entitled to "super-priority") from profiting by "trading" on priorities, and of causing inequities to third parties who would bring pressure for legislation, which the States could then enact without losing anything themselves. In brief, it would have been provided that, whenever such "trading" on priorities might occur, the priority of a mechanic lienor, for example (and, after a specified date, a mortgagee or purchaser), would be denied, and the United States would take the fund in order to prevent the State from getting it. Such provision would have prevented the

State (or other lienor having ''super-priority'') from profiting from the mechanic's priority, in the only way it could be prevented by federal law alone—by taking away the mechanic's priority whenever such situation arose, and giving the fund to the United States. The resulting inequity to the mechanic (and, after a specified date, to mortgagees and purchasers as well) would create pressure on the States to enact conforming legislation, which would solve the problem equitably.

The Committee has concluded, however, not to recommend adoption of subsection (k) as previously proposed. If some States should fail to enact the conforming legislation, serious inequities might arise. The probable diminishing importance of the circular priorities problem, if ''super-priority'' of real property taxes is recognized by federal law, is believed to make it unnecessary and unwise to incur that risk. The suggested state legislation above set out is, however, commended to the consideration of the Conference of Commissioners in Uniform State Laws.]

Special Problems Where Federal Lien Is Unfiled

The general rule of proposed § 6323(m)(2) would result in serious inequities if applied in cases where the circular priority arises from the failure of the United States to file notice of its lien. These cases may arise where an unfiled federal tax lien is preferred over a subsquent purchase, lease, security interest or lien because of the failure of such private claimant to give value, or because such interest was acquired by him in bad faith (*e.g.*, as part of a conspiracy to turn the taxpayer's assets into cash before the lien is filed). If an innocent third party thereafter acquires an interest, before notice of the federal tax lien is filed, he will be ahead of the federal lien but behind the prior interest, which in turn is subordinate to the federal lien. In any circular priority situation, the nearest approach to equity is achieved if each party receives his ''expected sum''—the amount he would have received after the party having priority over him is satisfied. But, since there may not be enough to go around on that basis, it is necessary to determine which party will be left short. The general rule of proposed § 6323(m)(2) favors the United States and the party preferred by state law, at the expense of the remaining party. If applied where non-filing of the federal tax lien has contributed to creation of the problem, the parties first satisfied would be the United States (which created the trap for the innocent party by failing to file) and the party who acted in bad faith or gave no value (who is superior, under state law, to the party subsequently acquiring an interest in ignorance of the federal lien). Clearly, a different formula, which protects the innocent party, even at the expense of the federal lien, where necessary, is required here. Such rules are provided in proposed § 6323(m)(3), (4), (5) and (6).

The provisions are admittedly complex, and deal with situations which perhaps will rarely arise. But when such situations do arise, only such provisions as these will prevent inequities to innocent parties without facilitating frauds on the federal tax lien. A number of examples will best explain the operation of the provisions:

Example (1): A federal tax lien for $18,000 arises by assessment on December 31, 1959, but notice thereof is not filed. On January 15, 1960, the tax-

payer gives a mortgage to a related person who lends him $17,000, knowing that it is part of a scheme to turn assets into cash which is to be concealed from the tax collector. The mortgage loan is payable $1,000 a year for 17 years. At this point, under proposed § 6323(l), the United States has a first lien, to which the mortgage is subordinate.

On December 31, 1960, the taxpayer borrows $6,000, on a second mortgage, from a person acting in good faith. The lender is unaware of the unfiled federal lien; and the easy terms of the first mortgage make him confident that there will be no default thereon, causing a forced sale which would sacrifice his second mortgage. Suppose the United States were then to foreclose its lien, and the property were sold for $20,000. If the general rule of proposed § 6323(m)(2) were applied, both the federal lien and the first mortgage would be preferred, and the innocent second mortgagee would get nothing. It would not be wholly equitable, either, to provide that the innocent party is entitled to his ''expected sum''—in this case $3,000 ($20,000 proceeds less than $17,000 first mortgage); for part of his reasonable expectation was that he was behind a mortgage payable in easy stages, not a tax lien that could be enforced by an immediate forced sale.

Accordingly, proposed § 6323(m)(3) provides that, when an innocent third party thus acquires a lien or security interest, the priorities will first be determined as if the earlier interest had been acquired in good faith and for value—thus eliminating the circular priority and creating a straight line priority: (1) bad faith party, (2) innocent party, and (3) federal lien. In lieu of the Government's priority over the bad faith party, proposed § 6323(m)(3) would subrogate the Government to the rights of the bad faith party against the property. In effect, the United States obtains the security of the first mortgage and the first mortgagee becomes, to that extent, an unsecured creditor. But as long as the taxpayer makes payments on his federal tax liability at the times and in the amounts required for payments under the mortgage, the mortgage cannot be foreclosed by the United States. In our example, suppose the taxpayer on January 15, 1961 pays $1,000 on the tax liability and $1,000 to the first mortgagee on his note. On January 15, 1962, he pays the United States $1,000 and the mortgagee $1,500, reducing the tax lien to $16,000 and the note to $14,500. On January 15, 1963, he defaults on both liabilities. The first mortgagee has the right to sue on the debt, but he cannot enforce the mortgage because the United States has been subrogated to his interest in the property to its full extent. The failure to pay $1,000 on the tax is deemed a default on the mortgage, to which the United States is subrogated, thus entitling the United States to foreclose. If the property is then sold for a net amount of $20,000, the United States receives $14,500, in subrogation to the first mortgage, and the second mortgagee takes $5,500.

If the United States does not wish to accept the delays involved in subrogation to the rights under the mortgage, the proposal would give the Government the option to enforce its lien immediately, with the same priority which the first mortgage enjoyed. But that right is conditioned upon the United States making up to the second mortgagee, out of its own share of the proceeds, the difference between the second mortgagee's equity in the proceeds of the forced sale and the full amount of his debt (having priority over the federal lien), thus eliminating the possibility of injury to the innocent party as a result of

the unfiled federal lien. Whether the United States would choose to exercise such election would depend upon the amount of the deficit in the share of the good faith party, and upon the term of the first mortgage. (In the example, it would cost the Government only $500 out of its share, to make good the second mortgagee's loss; it would have $14,000 immediately, rather than $14,500 over a period of years.)

The United States would have a further choice which it might exercise in appropriate circumstances. It could simply enforce its own lien, which, however, would be a third lien in this situation. It would then not have to await default on the first mortgage or indemnify the second mortgagee. In our example, there would be nothing left for the federal lien if this course were followed. But if the first mortgage were $8,000, the second mortgage $5,000, and the federal lien $6,000, the Government could collect its claim out of the $20,000 property by distraint sale, under its third lien, without need of going to court or disturbing the mortgages.

Example (2): The facts are the same as in Example (1) except that the first mortgage was taken for an antecedent consideration, in good faith but with knowledge of the unfiled tax lien. The creditor realized that he would stand behind the $18,000 tax lien, but took a mortgage from his shaky debtor as the best protection possible in the circumstances. If those were the only claimants, the United States would take the first $18,000 of the proceeds (the mortgagee not having given "value", as defined in proposed § 6323(p)(7)), and the mortgagee would be entitled to the balance. Since he acted in good faith, and not to defeat the prior tax lien, it would be unfair to give him less, merely because an innocent second mortgagee enters the picture. The circuity having been caused by the failure of the United States to file, and the other parties having acted in good faith, the loss should fall on the United States.

As in Example (1), the United States would be subrogated to the first mortgage, but could not foreclose it until the taxpayer failed to make payments to the United States equal to those required under the mortgage. If default occurred when the tax debt had been reduced to $16,000 and the first mortgage debt to $14,500, the straight-line priorities would be: first mortgage ($14,500), second mortgage ($6,000), tax lien ($16,000). The amount left for the second mortgagee out of the $20,000 proceeds would be $5,500. Under the proviso in proposed § 6323(m)(3), which is applicable when the first mortgagee acted in good faith and for a consideration (although an antecedent one), the Government is subrogated to the first mortgage only to the extent of $16,000 (the amount of the federal lien), reduced by the amount of the net proceeds payable to the second mortgage ($5,500), or $10,500. Thus, the Government will take $10,500, and $4,000 will be left for the first mortgagee, the same amount he would have recovered (behind the federal lien) if the second mortgage had not intervened.

As in Example (1), the United States has the option to proceed without awaiting default on the first mortgage, if it elects to pay the second mortgagee, from the Government's share, the amount by which the second mortgagee's share in the proceeds falls short of full satisfaction. Here, if the proceeds are $20,000, the United States, in subrogation to the priority of the first mortgage, would receive $10,500, and pay $500 of it over to the second mortgagee (to make up the difference between his $5,500 equity in the proceeds and the full debt).

The $10,500 is the difference between the $16,000 federal lien and the $5,500 payable to the second mortgagee (disregarding for this purpose the $500 he takes from the federal share). That leaves $4,000 for the first mortgagee, as above.

Example (3): The taxpayer has a building with a value of $20,000. After a federal tax lien for $16,000 arises, but before it is filed, the taxpayer gives a related party a long-term lease on the building at $1,000 a year, their purpose being to assure its continued availability to the taxpayer. The taxpayer then places a $5,000 mortgage on the property, subject to the lease. The mortgagee has priority over the unfiled tax lien but is subject to the leasehold which, having been taken in bad faith and for the insufficient value, is subordinate to the tax lien. Proposed § 6323 (m) (3) substitutes a straight line priority, (1) leasehold, (2) mortgage, and (3) tax lien; but it subrogates the United States to the valuable leasehold, which it may realize upon by sale or sublease. If the mortgagee forecloses and the property brings only $5,000 (because of the lease), the mortgagee will take the $5,000 in preference to the United States; but the leasehold, to which the United States is subrogated, will survive the foreclosure.

Example (4): A federal tax lien for $18,000 arises by assessment on December 31, 1959, but notice thereof is not filed. On January 15, 1960, a related party, in bad faith, lends $17,000 on a first mortgage, payable $1,000 a year. On December 31, 1960, the property is sold to an innocent party for $25,000, including assumption of the mortgage. The United States, under proposed § 6323 (m) (4), would be subrogated to the mortgage lien, and also to the first mortgagee's rights against the purchaser on the assumption of the mortgage (although the mortgagee can still enforce his debt as an unsecured claim against the taxpayer). Upon due notice, the purchaser must pay the United States the amounts prescribed by the mortgage. If default occurs, the United States is subrogated to the mortgagee's right to foreclose. If such default occurs when the tax lien has been reduced to $16,000 and the mortgage to $15,000, and the property brings $20,000 on foreclosure, the United States, in subrogation to the first mortgage, will take $15,000, leaving $5,000 for the purchaser. If (as in Example (2)) the mortgagee had acted in good faith but for an antecedent consideration (with knowledge of the tax lien), the federal share ($15,000) would be reduced by $5,000 (the amount paid to the purchaser), so that the United States would get $10,000 and the mortgagee $5,000 (the same amount he would have realized out of $20,000 proceeds, behind the known federal lien, if the bona fide purchase had not occurred).

The option which proposed § 6323(m)(3) allows the United States to enforce its rights without awaiting default on the mortgage cannot equitably be allowed under § 6323(m)(4). Whereas a second mortgagee is made whole if he is paid the full amount of his claim, the purchaser's right is not to receive a fixed sum but to have the indefinite future opportunity of appreciation, so long as the mortgage is not defaulted. He acquired that right without knowledge or means of knowledge of the federal lien. If the taxpayer had not first mortgaged the property to a bad faith party (or for an antecedent consideration), the tax lien would be completely cut off in favor of the innocent purchaser. The most the United States can expect in this situation is subrogation to whatever rights the mortgagee had.

Example (5): After a federal tax lien for $18,000 arises but before it is filed, the taxpayer sells property to a related party in bad faith. The purchaser then re-sells the property to an innocent party, taking his note for part of the price. This example does not involve circular priority, since the innocent party acquires his lien or interest from or through the bad faith party, rather than from the taxpayer subordinate to the bad faith party. If proposed § 6323 (l) were applied here, the bad faith party would not have good title (because as to him, the federal lien is treated as if it had been filed when he acquired knowledge of the lien). Yet that defect would not show on the record. Even if the federal lien had been filed before the second sale, the record would show that the first sale antedated the filing, and the purchaser's title would appear good. Therefore, proposed § 6323 (m)(5) would make § 6323 (l) inapplicable as against the good faith party, and he thus would acquire good title, the tax lien having been filed after the sale to his predecessor in interest. In lieu of preferring the federal lien in such circumstances, proposed § 6323 (m)(5) provides for subrogation of the United States to any claim which the bad faith party may have against the transferee for unpaid purchase price. In effect, such right of subrogation takes the place of the right to levy on the purchase price, which the United States would have had if the taxpayer had sold directly to the innocent party instead of passing the property through a bad faith party.

Proposed § 6323 (m)(5) would apply like principles if a mortgage taken in bad faith were assigned to a good faith party, or if a bad faith purchaser mortgaged the property to a good faith party.

Example (6): The facts are the same as in example (5) except that the purchaser, with knowledge of the unfiled tax lien but in good faith, accepted the property from the taxpayer in satisfaction of an antecedent debt. He then resold to an innocent party who was unaware of the defect in the first purchaser's title. Proposed § 6323 (m)(5) would protect the innocent purchaser, even if the federal tax lien had been filed in the interim. But the United States, to the extent of its lien, is subrogated to the right to the unpaid purchase price. Since the original purchaser knew he was subject to the tax lien, he could not have expected to recover more from a sale of the property than the excess over the tax lien; and the provision for subrogation leaves him in that position.

Finally, proposed section 6323 (m)(6) provides that any payment by the good faith party to the United States under its rights of subrogation, as above described, will *pro tanto* discharge his obligation to his obligee; and that to the extent that the United States is subrogated to any party's rights against the property, the latter's rights shall be discharged. The premise upon which the validity of these proposed provisions of federal law (section 6323 (m)(3)-(6)) for subrogation and discharge of obligation existing between private parties is based is that the power to subordinate the interest acquired in fraud of a known federal tax lien, or without present consideration, includes the power to appropriate the proceeds of it when the interests of third parties have intervened. Admittedly it is a novel concept although further study might reveal precedents for it. The basic principle is simply that of equitable subrogation. The alternatives are to adopt a rule that would harshly affect innocent third parties, or to give up entirely the effort to subordinate the bad faith party (or the party not giving value) whenever such other interests

have arisen. The latter would make evasion of the lien possible through procuring an innocent party to make a small investment. Since the possibility exists that the provision discharging the bad faith party's claim against the innocent party (or the former's lien on the property which is ahead of the latter's interest under state law) may be invalidated, proposed section 6323 (m)(6) provides that the United States shall indemnify the innocent party.

The Committee is keenly aware of the complexity of this proposal, and its novelty. Accordingly it has carefully drafted the pertinent provisions in such fashion that, should the Congress not approve these particular provisions it can eliminate them without impairing any other provisions or segment of the draft legislation. The inequities involved have seemed, to the Committee, so great as to require it to recommend a solution, notwithstanding the complexity inherent in any such remedy.

Section 6323(n). Disclosure of Amount of Outstanding Lien

The first sentence of proposed § 6323(n) is the same as present § 6323(d), except for a change of a reference. The present provision enables a prospective purchaser or encumbrancer of property to ascertain how much is still outstanding on a filed tax lien, so that he can know the extent of the lien to which his interest will be subject. But the law provides no protection to him in case of a clerical error in the information, and it is doubtful that the Government would be estopped. In contrast, present § 6325(c) gives conclusive effect to a certificate of release or discharge of lien. Proposed § 6323(n) would give like conclusive effect to the information furnished pursuant thereto, but only in favor of the person (other than the taxpayer) to whom it is given or his disclosed principal. If the error is discovered, the lien may be reinstated by advising the same person in writing, but such reinstatement would not affect the priority of any lien or interest acquired by or through such person in the interim.

Section 6323(o). Liens and Interests Preferred Regardless of Time

Certain purchasers of merchandise. Under proposed § 6323(o)(1), even the fact that a federal tax lien has been filed and is known to the purchaser would not prevent a sale of merchandise, free of lien, to a customer in the ordinary course of business. Thus, an appliance dealer or automobile dealer whose tax difficulties become generally known could continue selling to customers. The one exception would be sales in bad faith with intent to defeat collection of the tax, which intent is known to the purchaser.

Money. Under present § 6323(c), money is deemed a "security," which means that, despite a filed lien affecting all the taxpayer's property (including money), his money can pass free of lien to any person without *actual* notice or knowledge of the lien. However, at least technically, any person receiving money from the taxpayer with knowledge of the lien, whether in payment of debt or for new consideration, receives such money subject to the lien. In order that money may move freely in commerce, proposed § 6323(o)(2) would relieve money of the lien whenever it passes to another for value (including, for this purpose, the payment of a past debt), unless the payment is made in bad faith, with the intent (known to the recipient) to defeat collection. Money is defined in § 6323(p)(10) to include a check, money order or other instrument commonly

used for the transmission of money, except a check drawn on an account on which a levy is made before the check is charged to the account.

Certain interests in securities. Proposed § 6323(o)(3) is based upon present § 6323(c)(1), with new defined terms substituted for former language. The definition of ''security'' in proposed § 6323(p)(11) is substantially the same as in present § 6323(c)(2), except for the omission of money, which is proposed to be separately treated (above), and the addition of negotiable warehouse receipts and negotiable bills of lading. Purchasers and persons acquiring security interests in ''securities'' are relieved of the effect of a filed tax lien, but are bound if they have actual notice or knowledge of the tax lien.

The addition of certain negotiable title documents to the protected classes is based on the fact that they pass freely in trade and have attained a widely accepted status of quasi-negotiability. It is believed that the reasons which motivated the original enactment of the special provision for ''securities'' apply to such documents.

[Note: Consideration was given to proposals that many other types of property, including life insurance policies, inventories, accounts receivable, oil and gas interests, bank passbooks, etc., be embraced within the exception. It was not felt, however, that the convenience of purchasers and lenders in not having to search the public record for notice of federal tax liens on such properties was as compelling a reason as the need to maintain free negotiability of securities, negotiable instruments and title documents. In the case of revolving commercial credit, equivalent relief from the inconvenience of frequent searches for liens can be achieved by complying with the notice requirements of proposed § 6323(a)(2)(E).]

Vendors' liens and purchase money security interests. Under general law, a purchase-money mortgage is favored over prior liens existing against the purchaser, on the theory that all he acquired, to which such liens could attach, was an encumbered title. Proposed § 6323(o)(4) would apply that rule as against the federal tax lien, and would extend it also to a statutory or equitable vendor's lien (contrary to the result reached in *United States* v. *Morrison,* which held a vendor's lien too ''inchoate'' to prevail even over a subsequent federal tax lien). Where a third party supplies funds for a purchase of property, and has under state law the priority of a purchase-money mortgagee, he would enjoy priority against the tax lien, provided the money is *in fact* applied on the purchase.

Certain claims of mechanic lienors and sureties upon contract proceeds. Proposed § 6323(o)(5) gives mechanic lienors and sureties first priority in the proceeds of a contract for work on real estate, as against liens for the contractor's taxes (other than taxes required to be withheld, which would have priority under proposed § 6323(i)). Since they created the fund by their work and materials, they should be first satisfied from the fund, ahead of unrelated tax liens against the contractor, even though filed before the work commenced.

Certain liens upon and security interests in personal property. Proposed § 6323(o)(6) recognizes that, in ordinary dealings with personal property, certain liens are acquired by persons who cannot reasonably be expected to make a search for federal tax liens. To enforce a prior tax lien at the expense of their interest compels them to bear another's tax burdens, from which they could not reasonably protect themselves even by normal diligence. Therefore, this provision prefers,

over even a previously filed tax lien, such liens as the garageman's lien for repair of an automobile, a jeweler's lien for making a new setting for a ring, and a warehouseman's or a carrier's lien. An innkeeper's lien on the baggage of a transient guest would be similarly treated (but in the case of a permanent guest, subsection (e) would apply). A lien for the services of a breeding animal, and a lien on an animal, vehicle or vessel for damage done thereby would be similarly treated. Such treatment would apply both to liens arising under state law and contractual security interests for the same purposes.

Maritime liens. It was held in *United States* v. *Flood* that Congress intended to favor maritime liens over even pre-existing federal tax liens. Proposed § 6323(o)(7) leaves such treatment undisturbed.

Certain liens upon and security interests in causes of action. Where state law gives an attorney a lien upon the fund he creates by recovering on a cause of action, proposed § 6323(o)(8) would prefer such lien (to the extent of a reasonable fee and expenses), whether it arises before or after the federal tax lien. This would confirm the former decisions and administrative practice, which were recently departed from in *United States* v. *Goldstein.*

Numerous States also give hospitals, and some also give doctors, dentists and nurses, a lien on a cause of action for personal injury. The part of the recovery that reflects hospital and medical bills should go to pay such bills, and not to satisfy even pre-existing tax liabilities of the injured person. Proposed § 6323(o)(8) would prefer such liens upon a cause of action for personal injury or death, therefore, regardless of when the tax lien arose.

A contractual security interest in such a cause of action for any of the foregoing purposes would have the same priority.

Decedents' estates. Although the expense of administration of a decedent's estate and funeral expenses are generally acknowledged to have priority over federal tax claims in an insolvent estate, it is now uncertain whether that is true if the federal tax had become a lien before death. It is proposed in § 6323(o)(9) to provide for priority of such items, whenever state law gives such items priority over statutory liens, and when they have been duly allowed by a court.

Constructive trusts. Where funds or property are embezzled or fraudulently taken by the taxpayer, and where for any other reason equity recognizes a constructive trust, proposed § 6323(o)(10) recognizes the priority of the claimant if he can trace the money or property.

State and local real property tax liens. A real property tax lien, under present law, is preferred over the federal tax lien if such property tax is assessed and becomes a lien before the federal tax lien arises. *United States* v. *City of New Britain.* Proposed § 6323(o)(11) would go further and consent to the priority of subsequent taxes on real and immovable property. In the great majority of States, real estate taxes are granted priority over pre-existing mortgages and private liens, on the theory that the tax is on the whole property, regardless of the number and nature of the interests into which it may be divided. Often the tax is enforceable only out of the property, and would be wholly lost if the property is taken for a prior federal claim.

The reason later property taxes cannot now prevail over a federal tax lien is that the interest of the United States cannot be taxed without its consent. There is precedent, however, for giving such consent where the property is and remains in private use, the Government's interest resulting merely from the collection of a debt. See 7 U.S.C. § 1024; 12 U.S.C. § 1714; 38 U.S.C. §694 j (a) (6).

In cases where the property is mortgaged, the proposed provision would have the added merit of eliminating the ''circular priority'' problem in the very cases where that problem most frequently arises, thus removing an inequity to mortgagees and other prior lienors which results from the present conflict of federal and state tax priorities. See discussion of proposed § 6323(m)(2), above.

Special assessments. Proposed § 6323(o)(12) would consent to the priority, even over pre-existing federal tax liens, of nondiscriminatory special assessments to pay for public improvements, on the theory that such improvements enhance the value of the property and the Federal Government would be unjustly enriched if it took the benefit of such enhancement of value in preference to the local government.

Section 6323(p). Definitions

Most of the definitions have been discussed above in connection with the subject matter to which they relate. The definitions of ''security interest,'' ''effective'' and ''value'' are discussed under § 6323(a); ''purchase,'' ''purchaser'', and ''lease'' under § 6323(b); ''mechanic'' under § 6323(c); ''bad faith'' under § 6323(l); ''money'' and ''security'' under § 6323(o). Those which have not been discussed are:

''*Lien*''. The term ''lien,'' defined in proposed § 6323(p)(4), is used in contradistinction to ''security interest'' (which is contractual), and means only a lien or similar interest existing at common law or in equity or by statute, rather than by contract. Following the precedent of the A.B.A.-approved bankruptcy bill (H.R. 5195, 85th Cong.), recognition is not given to so-called liens which first become effective upon the insolvency of the debtor, or upon distribution or liquidation of his property, or upon execution levied by one other than the lienor. Such spurious liens merely determine the order of distribution in insolvency or liquidation, and create mere priorities rather than property rights.

''*Knowledge*''. Under proposed § 6323(p)(9), a person would be deemed to have knowledge of a fact only if a responsible individual acting in the transaction knew the fact. Thus, if a bank's loan officer knew of a tax lien against the taxpayer, but its investment officer did not, securities purchased from the taxpayer for the bank by the latter officer would be free of the tax lien (§ 6323(o)(3)). However, where the statutory test is whether the person knew or reasonably should have known the fact (as in proposed § 6323(a)(2)(E)), the question whether, in all the circumstances, the officers should have communicated with each other will remain open for determination.

''*Applicable law*''. The term ''applicable law'' is used frequently in the proposed legislation with reference to rights existing in private parties. In general the reference is to state law, but it is possible that such rights might, in some circumstances, arise under a federal law. It is not intended, however, that the

courts should construe as ''applicable'' the federal priority rules heretofore developed by decisions, and thus nullify the amendments. It is therefore provided in proposed § 6323(p)(12) that ''applicable law'' does not include federal laws and decisions relating to the priority of federal taxes and debts.

Other terms. Since a lien is a ''privilege'' in Louisiana, and other differences in terminology exist, proposed § 6323(p)(13) makes clear that the terms used in the federal statute extend also to liens and interest having like characteristics although known by different names.

Section 6323(q). Cross Reference

To call attention to the duties and possible liabilities of purchasers, debtors, bailees and others who make payment or delivery with knowledge of an unfiled lien, a cross reference is made to section 6332, discussed below.

Section 6324. Special Liens for Estate and Gift Taxes

Section 6324 of present law provides that the estate tax shall be a lien for ten years from death and the gift tax shall be a lien for ten years from the date of gift. On the other hand, the time for assessing such taxes expires, in general, three years after the return is filed, and the time for collection expires six years after assessment, unless the respective periods are extended. So far as is known, the Revenue Service has never formally taken the position that the lien remains valid or enforceable after the time for assessment or collection has expired; but the question has been raised by field officers, and it has also been considered to raise a possible cloud on title. Proposed § 6324(a) and (b) would make clear that the lien expires when the statute of limitations on assessment or collection expires, if that is within the ten years.

Proposed § 6324 also correlates the priority rules respecting the estate and gift tax lien with those proposed in § 6323 with respect to the general tax lien. Under proposed § 6324(c)(1), an absolute priority would be given to the same interests which are preferred, ''regardless of time'', over the general tax lien, under proposed § 6323(o). Thus, real property taxes accruing after death, which are now subordinate to the estate tax lien (*Michigan* v. *United States*), would be preferred over it. An attorney's lien upon a cause of action inherited from a decedent would have priority in the proceeds of the action.

Proposed § 6324(c)(2) makes clear that the estate or gift tax lien is subordinate to liens and interests which already existed in the property when the estate or gift tax lien arose. This, in general, probably reflects existing law, except that the new standard of ''choateness'' of liens competing with the federal lien, as applied under proposed § 6323, would be applied here also. Thus, if a state income tax had been assessed and became a general lien before death, so that it would, under the proposal, have had priority over a general federal tax lien arising at the moment of death, it would also have priority over the estate tax lien.

Present law provides a limited and somewhat indefinite protection to a ''bona fide purchaser, mortgagee or pledgee'' acquiring an interest in property for full value after the estate or gift tax lien arises. It has been ruled that mere knowledge of a death in the chain of title does not negative one's status

as a ''*bona fide*'' purchaser or encumbrancer, if the dealing is ''at arm's length, as between strangers.'' *Rev. Rul. 56-144.* But it is unclear just what it takes to negative *bona fides.* Under proposed § 6324(c)(3), a purchaser or one who acquires a security interest would be protected from an earlier estate or gift tax lien (in the absence of an assessment, which gives rise to a general tax lien and makes the rules of § 6323 also applicable), provided (1) his interest was acquired for value (which is defined in proposed § 6323(p)(7) as an adequate and full consideration in money or money's worth), and (2) he did not act in bad faith, with intent to help the tax debtor defeat collection of the tax.

In the case of property which passes from the decedent at death (as distinguished from certain inter vivos transfers, joint tenancies, etc., which are included in the gross estate), not even a *bona fide* purchaser is protected from the estate tax lien, under present law, unless the executor obtains a discharge from personal liability for the estate tax under § 2204. That may be a reasonable restriction in the case of real estate, where the existence of a discharge can be readily ascertained. But it creates difficulties in the case of the family jewels, and other personal property, after it has passed out of the hands of the executor or administrator. It is proposed, therefore, to retain the present rule with respect to real estate, but to relieve purchasers of and persons acquiring security interests in personal property, in good faith and for value, after administration has terminated, even if the executor failed to obtain a discharge under § 2204.

Present law affords no protection to mechanics' liens or landlords' liens, as against the estate or gift tax lien. A person who builds a house on land that has, in the preceding ten years, been given to or inherited by the owner, conceivably could lose the product of his work to the Government under a lien for an estate or gift tax which, at the time the work is done, has not even been assessed. Proposed paragraph 6324(c)(3) would protect mechanic lienors and landlords in their liens, acquired in good faith and for value, whether or not the executor had obtained a discharge. Lessees would be given similar protection.

Proposed section 6324(c)(4), transferring the lien to the consideration received or (in certain circumstances) transferring it to all the property of the person liable, in case the lien is divested or subordinated under the foregoing provisions, restates present law.

Present § 6324 contains provisions not actually related to liens, which impose personal liability for the estate tax on certain transferees, survivors, beneficiaries, etc., and which impose gift tax liability on the donees. Such provisions, for symmetry in the statute, are proposed to be moved, without material change, to the respective chapters of the Code imposing liability for the estate and gift tax. Proposed §§ 2205(a) and 2501(c).

Section 6325. Release of Lien or Partial Discharge of Property

Section 6325(b)(3). Recovery of Amount Paid

Section 6325(b)(2) of present law provides for the discharge of a property from the federal tax lien if there is paid to the United States an amount equal to the value of the Government's interest. (No payment is supposed to be required if that interest is valueless.) Frequently such discharges are needed

by mortgagees and other lienors desiring to clear the title preparatory to a sale. The fixing of the amount to be paid requires the Director to determine not only the value of the property but also the validity and priority of the competing liens. If such issues are determined adversely to the applicant, he must acquiesce and pay the amount demanded, or submit to the delays of litigation while the property remains encumbered (thus possibly losing a sale or other opportunity for favorable disposition of the property). Present law is unclear concerning the right of the applicant to pay the amount demanded, thereby clearing the title promptly, and then to sue for its recovery on the ground that the amount was fixed on the basis of an erroneous determination of law or fact.

Proposed § 6325(b)(3)(B) would make clear the right to recover a payment made to the District Director to obtain discharge of a federal tax lien if the amount was based upon an erroneous determination of the validity or priority of the payor's lien or interest. (It would not apply where the dispute related to value, which ought to be settled by letting the property be sold, not by litigation.) Since payments for discharge are credited on the tax, and thus cause the Director to refrain from collecting from other sources, it would be required that the payor give notice of his objection to the District Director's determination of the validity and priority of competing liens by making protest at the time of payment, and that he commence suit within 60 days (in order to minimize the period in which the amount still owed by the taxpayer will be uncertain). The suit would be brought against the United States under proposed § 7431 (discussed below).

Proposed § 6325(b)(3)(A) simply makes clear that the foregoing procedure is in addition to the taxpayer's own right to recover the discharge payment if the tax itself was overpaid.

Section 6325(d). Subordination of Lien

In order to provide, for discretionary use in appropriate cases, a more flexible procedure than that provided for release or discharge of the lien, proposed § 6325(d) would permit subordination of the tax lien.

Example (1): A person claiming a lien on the taxpayer's property wishes to assign his claim. The assignee requires assurance that the lien has priority over a federal tax lien. If the Director does not dispute such priority, he could issue a certificate acknowledging it, under proposed § 6325(d)(1).

Example (2): A businessman whose taxes are delinquent satisfies the Director that there is a better chance of ultimate full payment if he is allowed to continue in business than if his property is sold. The Director is willing to refrain from sale if the taxpayer raises $15,000 to apply on the tax. The taxpayer borrows that sum on his property, and the Director accepts subordination to the lender's lien, conditioned on payment of the proceeds to the Director. Proposed § 6325(d)(2). The Government's relative position is unchanged, since it has cash where formerly it had a prior lien, and it still has its lien on the remaining equity. The partial payment reduces the amount of the Government's speculation on the taxpayer's ability to recover if given time.

Example (3): If the taxpayer needs a loan to improve or repair his property, to feed livestock, or for working capital, he cannot qualify under proposed

section 6325(d)(2). But if he convinces the Director that the chance of collection of the tax will be improved as a result of the loan, subordination of the federal tax lien to security given to secure such a new loan may be granted under proposed section 6325(d)(3).

Section 6325(e). Non-Attachment of Lien

When a tax lien is filed against "John Smith," it may cloud the title to property of others having the same name. The practice has developed of granting such other persons "certificates of non-attachment," to clear their titles, when the Director ascertains that they are not the taxpayer against whom the lien exists. Proposed § 6325(e) would provide a statutory basis for such practice, and (in conjunction with proposed § 6325(f)) would protect those relying on the certificate of protection even if it was mistakenly issued.

Section 6325(f). Effect of Certificate

Proposed § 6325(f) would extend to the certificates of subordination and of non-attachment the same conclusive effect, in favor of third parties relying upon them, as is now provided for certificates of release or discharge.

Section 6325(g). Revocation of Certificate

Proposed § 6325(g) would permit the revocation of any certificate of release, discharge, subordination or non-attachment, if it is found to have been issued erroneously or improvidently. Any person taking substantial action in reliance on the certificate before he has actual knowledge or notice of the revocation would be protected. Usually, the Director would know, from the negotiations for its issuance, who was expected to rely on the certificate, and he could notify that person. If the person in possession refused to surrender the certificate, the aid of a court could be invoked to require it. If the certificate has been filed or recorded, the Director should file notice of the revocation in the same office.

Section 6325(h). Cross References

In view of the proposed repeal of section 7424 and addition of section 7431 (discussed below), the cross-references must be conformed. A reference to Title 28, U.S. Code § 2410 is also added.

Section 6332. Obligations of Taxpayer's Obligors and Bailees

Section 6332(a). Requirement

The first sentence of this subsection, requiring a taxpayer's debtors and those holding his property to pay over or deliver in response to levy and demand, is the same as present law, except for adding a reference to new subsections (c), (d) and (e).

The second sentence makes clear that a levy applies only to property then in the possession of, or obligations then owed by, the person levied upon. Thus, a bank could satisfy a levy by paying over the amount then in the taxpayer's account, and (even if the levy was not fully satisfied) would not be obliged to be alert for additional deposits which the taxpayer might thereafter make, or to pay over such deposits to the Director in the absence of a new levy.

Section 6332(b). Penalty for Violation

Present section 6332(b) imposes a 100 per cent civil penalty upon anyone failing to turn over money or property of the taxpayer in response to levy and demand. Often there may be doubts concerning a person's liability to the taxpayer, or the taxpayer's ownership of the claim or property, or other good reason for not complying, and such issues are litigated in a suit for the penalty, which applies regardless of whether the failure was "wilful." It has long been considered that this "penalty" is not penal but is a mere device for collecting the tax; therefore, the "penalty" has been credited on the tax liability. *I.T. 2577.* One court, however, has held that the penalty is to be collected over and above the tax. *United States* v. *Peoples State Bank.* A proposed amendment to § 6332(b) would make clear that collections of "penalty" thereunder shall be credited to the account of the tax liability, and also that the penalty shall not be collected if, in the interim, the tax has been collected.

A further amendment to § 6332(b) would impose the penalty when a person, before levy, has made payment or delivery or acquired a set-off or defense, if he did so in bad faith. "Bad faith" is defined in proposed § 6323(p)(8), and requires, not merely knowledge of a tax lien, but an intent to hinder, evade or defeat collection of the tax, which intent is known to the person charged with bad faith. Clearly, under this proposal, knowledge of the lien by some officer or other person not acting in the transaction, would not be evidence of such bad faith. Furthermore, even knowledge of the lien by a responsible actor in the transaction would not ordinarily evidence bad faith if the payment occurs in the ordinary course of business (*e.g.*, honoring checks, or paying a note at maturity); but the debtor with knowledge can further evidence his good faith by affording the Director an opportunity to levy (as recommended in *Rev. Rul. 57-367*). Bad faith might exist, for example, where a bank learns of an impending levy and warns its customer to make a quick withdrawal; or where a taxpayer induces his debtor to pay a debt before it is due, with the intention, known to the debtor, of defeating a levy.

In the absence of such bad faith, a life insurance company would be protected in making loans on the security of its own policies without checking for tax liens filed against the policy-owner, since the company is viewed, not as making a loan on security, but as prepaying its policy obligation. *Revenue Ruling 56-48,* citing *Board of Assessors* v. *New York Life Ins. Co.* Since that is the position of the Internal Revenue Service, and it is supported in principle by the Supreme Court, the amendments proposed in Section 6332(b) and (c) cover these transactions and therefore no provision is proposed to expressly codify such rule.

Section 6332(c). Prior Payment or Delivery

Proposed § 6332(c) would dispel doubts which have existed concerning whether a bank or other debtor of a taxpayer, or one in possession of his property, is bound to search for federal tax liens against him before paying the debt or delivering the property. Neither record notice nor actual knowledge of a lien would, under this proposal, in the absence of a levy, prevent the payment of a debt or the delivery of property from being a complete defense to the debtor or bailee, unless he acts in bad faith (as above discussed).

Section 6332(d). Set-offs and Other Defenses

Proposed § 6332(d) would establish the principle that debtors and bailees of the taxpayer should not be subject, by reason of the taxpayer's delinquencies, to obligations and risks more onerous than they had contracted to assume. District courts have deprived debtors of the taxpayer of the right to rely on a settlement or on the statute of limitations, where such defenses arose after there was a tax lien against the creditor but before levy. It is suggested that the rights between the taxpayer and his debtor or bailee should, in general, be fixed as of the time of the levy, rather than on the lien date. As the Internal Revenue Service recognized in *Rev. Rul. 57-367,* the date when the lien arises or is filed is pertinent in determining priority as between the Government and the taxpayer's creditors, but it is ordinarily of no concern to his debtors and bailees.

A similar problem arises where the debtor (*e.g.,* a bank), by state law or contract, has a right to set off mutual obligations. The Court of Appeals for the Ninth Circuit has held that a bank may not set off a taxpayer's debt to it against a levy on his bank account unless the right was ''choate'' when the federal tax lien arose—which apparently means the right must have been exercised already and cannot be exercised as a result of the levy. *Bank of Nevada v. United States.*

It is proposed, therefore, to permit a debtor or bailee to rely on any set-off or defense, valid under state law, which he might have maintained in an action by the taxpayer commenced at the time of levy (or when the obligation matures, if the levy precedes such date).

Example 1: Taxpayer holds A's note due November 1, 1959. A holds the taxpayer's note due July 1, 1960. Levy under a federal tax lien against taxpayer is made on A on November 1, 1959. Ordinarily, A may not set off the note held by him, since it had not matured on the date of levy and A could not have it set off in an action commenced against A by the taxpayer on that date. However, if, by reason of insolvency or otherwise, applicable law would permit such set-off, in such an action, it could be raised against the levy. Likewise, if under applicable law or by its terms the obligation is accelerated or converted into a demand note as a result of the levy, the set-off would be permitted.

Example 2: Taxpayer holds an $8,000 note of A due August 20, 1959 and a $12,000 note of A due October 1, 1959. A holds the taxpayer's note for $20,000 due December 1, 1959 and another for $10,000 due September 15, 1959. A levy is made on A on September 1, 1959. The taxpayer's note for $20,000 (due December 1) may not be availed of as a set-off against either of A's notes (except as noted under Example 1), since it was not matured either at the date of levy or at the later maturity of the $12,000 note. However, the taxpayer's note for $10,000 (due September 15) may be used as an offset against A's $12,000 obligation (due October 1), since by the time the latter matures, A will have a matured right of set-off.

The taxpayer's debtor would not be entitled to rely on a defense or set-off which is acquired in bad faith, with intent to hinder, evade or defeat collection of the tax (*e.g.,* the making of loans against unearned salary, to defeat anticipated levies; the buying of discounted judgments against a taxpayer by a debtor having knowledge of a prior lien, for the purpose of satisfying his debt by offsetting

them; or the settlement of a claim for less than it is worth, for the purpose of reducing the assets which can be reached for a known tax liability).

A further exception is proposed, with respect to defenses which do not negate or reduce the debtor's liability but entitle him to require certain protection against possible liability to third parties. For instance, if a debt is evidenced by a negotiable instrument, or property is covered by a negotiable warehouse receipt or bill of lading, the taxpayer could not obtain the money or property without surrendering the instrument or, if it is lost, indemnifying the debtor or bailee against loss resulting from the instrument remaining outstanding. Yet it has been stated that, at least in the case of a warehouse receipt, the bailee cannot insist, against the Government, upon the protection to which state law (on the basis of which he contracted) entitles him. *United States* v. *Caldwell.* Savings banks, by law or contract, may be entitled to require surrender of the passbook as a condition to payment of the account, but that requirement is no defense against the Government. *United States* v. *Manufacturers Trust Co.*

Under proposed § 6332(d), the Government would not be impeded in reaching an obligation which is admittedly due to the taxpayer, merely because it is unable to obtain possession of a document or because it cannot find the taxpayer in order to have an act by him compelled by the court. On the other hand, the obligor should not be deprived of the protection against double liability to which state law or his contract entitles him. The proposal would let the Government realize upon the obligation without physical surrender of the document, but would have the Government indemnify the obligee if someone else later appears and claims rights under the document. In order to retain the benefit of the indemnity, the obligor would be required to notify the Attorney General when a claim is made against him, and to cooperate in much the same manner as the person insured under a liability policy must do.

Section 6332(e). Conflicting Claims

Proposed § 6332(e) provides that a person levied upon will be excused from the penalty for non-compliance if he asserts in good faith that an adverse claim exists. However, he will not be excused if he pays over to the adverse claimant and that proves to have been in error. To be fully protected, the stakeholder must promptly bring an interpleader action in which the claims of the United States and of the adverse party can be determined. (Title III, below, amending Title 28, U. S. Code § 2410(a), would provide clear consent of the United States to be named in an interpleader action, a matter which is not clear under present law.)

Section 7403. Action to Enforce Lien or to Subject Property to Payment of Tax

Section 7403(e). Set-offs and Other Defenses

Proposed § 6332(c) and (d), heretofore discussed, permit the taxpayer's debtors and bailees to raise certain set-offs and defenses against a levy, and also make unavailable certain other defenses involving failure to surrender a document, etc. A conforming amendment is proposed to § 7403, permitting the same set-offs and defenses if the Government sues to foreclose its lien upon the property or obligation. In the case of a foreclosure suit, however, one further

defense is made unavailable to the obligor, namely, the failure of the taxpayer to make an election. This would confirm the rule of *United States* v. *Metropolitan Life Ins. Co.*, under which the Government can require a life insurance company to cash an absconding taxpayer's policy, even though the policy cannot be physically surrendered and the taxpayer cannot be compelled by an *in personam* order to elect to take the cash value. The insurance company would be indemnified against double liability.

SUBCHAPTER C—PROCEEDINGS BY NON-TAXPAYERS

SECTION 7431. COLLECTION FROM PROPERTY OF THIRD PARTY

Proposed § 7431 is intended to codify the procedural rights of third parties whose property is seized or threatened with seizure for the tax liabilities of another. It has no application to the rights of the person against whom an assessment is made, whether as taxpayer, transferee or otherwise. Procedures available to such persons are provided by existing provisions of the Code.

Proposed § 7431(a) permits the bringing of an action against the United States by any person (other than the person assessed) who has or had a lien upon or any interest in property, if a levy is made or threatened against such property or a federal tax lien is asserted thereon which would prejudice such person; or if such property has been delivered to the District Director, with or without levy, by a person having no right to do so; or if it has been sold by the District Director under levy and the lien has been transferred to the proceeds; or if he has paid an amount under protest for discharge of the lien, under proposed § 6325(b)(3)(B).

Proposed § 7431(b) permits such person to obtain a declaratory judgment concerning his rights in the property as against the United States, if he does not desire to ask a sale or if the circumstances are inappropriate for a sale. This would replace the cumbersome "quiet title" procedure now provided under § 7424 of the Internal Revenue Code, which is proposed to be repealed. Although "quiet title" cases are now covered by § 2410 of Title 28, U. S. Code, that is a mere consent of the United States to be joined and is not itself a grant of jurisdiction (*Wells* v. *Long*), as proposed § 7431 would be. The declaratory judgment would be confined to questions of ownership and priority. As under present law (Title 28, U. S. Code § 2201), the declaratory judgment could not go to the merits of the tax. Proposed § 7431(e), discussed below.

Secondly, the third party could obtain an injunction against the United States, to protect his property rights. This confirms present decisional law, which holds that the restriction on injunctions imposed by § 7421 applies only to suits by taxpayers. However, the proposal would eliminate existing technicalities and confusion concerning whether the suit should be against the District Director of Internal Revenue or against the United States.

Third, the plaintiff can get his own property back, or money which was paid pursuant to wrongful demand.

Fourth, he can recover the value of the property, but only in limited circumstances. In view of the past unwillingness of Congress to extend the Tort Claims Act to torts committed in enforcing the tax laws (questionable

policy though that may be), general liability of the United States for damages suffered is not provided. That is left to the "common law" liability of the officer committing the wrong (although he in turn would be indemnified by the United States, under Title 28, U. S. Code § 2006, if he acted with "probable cause"). But it seems that the Government should at least accept responsibility to restore the value if property of a third person is wrongfully taken and cannot be returned because it was lost, materially injured or destroyed. If the property has been sold (unless the claimant's lien or interest is discharged and transferred to the proceeds), the claimant's remedy ordinarily would not be against the United States under proposed § 7431, but would be to follow the property into the hands of the purchaser at the distraint sale. If, however, the sale was unlawful and the true owner is for some reason unable to recover the property from the purchaser, it is proposed to permit the owner to recover its value from the United States.

Fifth, in cases where the property has been sold free of the claimant's lien or interest and transferred to the proceeds, as in a case where he held a subordinate lien, the claimant could recover his share from the United States.

In any such suit, where appropriate, the United States could counterclaim to enforce its tax lien.

Proposed § 7431(c) would impose short statutes of limitations on most suits by third parties. The reason for this is that, if money or property is applied on a tax liability and the ownership or priorities are disputed, so that the credit on the tax liability may later have to be reversed, it is impossible to know with certainty whether the taxpayer's account has really been paid. It is important to settle such matters as early as possible. Therefore, it is provided that a suit under this section may be commenced at any time before application of money or the proceeds of property upon the tax liability, but not later than one year thereafter (which should give the person ample time to discover his loss). If the Director learns of his claim and gives him express notice to commence suit to test his rights, the suit must be brought no later than 60 days after such notice (unless the one year period sooner expires). In the case of a payment for discharge of lien, made under protest under proposed § 6325(b)(3), the claimant will be aware from the outset that he has a cause of action, so (without need for notice to him) the time for suit would expire 60 days after the payment.

Proposed § 7431(d) makes clear that the prohibition on injunctions (§ 7421) is inapplicable to suits under § 7431. It also resolves a conflict of decisions on whether a third party whose property is taken must, like a taxpayer, file a claim for refund before suit. Such filing would, in this situation, serve only to delay a matter that would already have been administratively considered and which ought to be resolved by litigation as quickly as possible. Therefore, no claim for refund would be required.

Proposed § 7431(e) precludes use of this procedure to test the merits of the tax, by making the assessment conclusively valid for purposes of such suit, unless the United States asks affirmatively for foreclosure of its lien.

Proposed § 7431(f) makes clear that any existing right to sue a collection officer for damages is preserved. It also preserves whatever existing rights there may be to sue such officers for the same relief obtainable against the

United States under this provision. However, such actions have been subject to many technical objections in the past concerning whether the Director is the proper defendant. To limit such technicalities, it is provided that, if an officer is held to have been improperly sued in an action that could have been brought under this section, the action shall not be dismissed but the United States shall be substituted as a party, as if it had originally been joined.

However, to preserve the purpose of quick adjudication of disputes that keep the taxpayer's account in suspense, the same short statutes of limitations will apply to actions against officers, except for relief (such as damages) not available under this section. Also, for res judicata purposes, an action against an officer would be treated as if the United States had been a party, unless the suit is decided on personal grounds. This is similar to present § 7422(c), which relates to tax refund suits against collection officers.

Repeal of Section 7424

Section 7424 of the Internal Revenue Code provides a procedure for an action to clear title to property, which is so cumbersome that it has fallen almost totally into disuse. Since its purpose would be fully served by an action under proposed § 7431, repeal of § 7424 is recommended.

Title 28, U. S. Code Section 1346

It is proposed to permit suits under § 7431 to be brought against the United States in the federal district courts without regard to the usual $10,000 limit. This is in accord with the policy of permitting tax refund suits, without monetary limit, to be brought in the district courts.

Effective Date

It is proposed to make the amendments in Title I effective immediately upon enactment, and to apply them even with respect to pre-existing federal tax liens, except where the rights of the parties have become fixed by final judgment or by sale or agreement. However, it would be provided that (with respect to those few instances where the priorities of non-federal liens under present law and decisions might be restricted, or the obligations of others might be enlarged by the amendments) such retroactive operation shall not take away a priority already vested in any person nor increase anyone's obligations with respect to past transactions.

The Committee's decision to recommend such effective date provision was based on a number of considerations. First, it accords with the precedent established on the two occasions in the past 20 years when important liberalizations of the federal tax lien law have been made. When § 401 of the Revenue Act of 1939 added "pledgees" to the protected classes under § 3672(a) of the Internal Revenue Code of 1939 (now § 6323(a) of the 1954 Code) and also added the special exception for "securities", it was made effective "regardless of the time when the mortgage, pledge, or purchase was made or the lien arose", except "where the lien has been enforced by a proceeding, suit or civil action which has become final before the date of enactment." Chapter 64 of the Internal Revenue Code of 1954, which extended relief from the estate and gift tax liens comparable to the relief from the general tax lien which the 1939 Act

had provided, was made effective (by § 7851(a)(6)(B)) on January 1, 1955, even with respect to taxes imposed by the 1939 Code.

Although the present proposals provide relief on a much broader scale than did either of the amendments above described, and thus an early effective date may involve somewhat more revenue than was involved in the instances cited, nevertheless it seemed to the Committee highly undesirable, administratively and otherwise, to make the amendments inapplicable to tax deficiencies arising out of previous years' transactions or to limit the applicability of the new provisions to liens filed or arising after date of enactment. To do either of these things would mean that two different systems of priorities would be in existence and operative at the same time, their applicability in a given case depending solely on happenstance of the taxable period involved, or the time when the lien arose, or the time when it was filed, as the case might be. The important objective of providing security and certainty in business transactions would be frustrated if, for a long period of years, the possibility continued to exist of a federal tax lien arising, or being filed, which would have the old priority and involve all the present uncertainties and inequities.

In addition, the recommended effective date provision has a strong appeal on the ground of equity. If, as the Committee believes, fairness requires the granting of the relief proposed, that relief ought to be made applicable to all open cases.

However, the Committee does not regard the effective date provisions as of the essence of its recommendations. The important thing is to correct the rules so that at least ultimately equity and certainty may be achieved. If Congress is unwilling to make the proposed amendments apply at once to all open cases, the Committee suggests that the new priority rules be applied with respect to all federal tax liens *filed* after the date of enactment (without regard to the year as to which the tax was assessed, or the date of the assessment) rather than applying them only to liens *arising* under assessments made after that date (except in the case of the estate and gift tax liens, for which no filing is required). If the date the federal tax lien *arises* is made the test, serious uncertainties will persist in many future commercial transactions, since it cannot be known whether unrecorded liens exist which antedate the new statute.

In any event, the Committee believes that the applicability of the amendments should not be made to depend on whether the *non-federal* lien arose before or after the effective date of the amendments. If such test were applied, there could be two private liens upon the same property, the earlier of which (antedating the Act) would be subordinate to the federal tax lien, while the later one (arising subsequent to enactment) might be preferred to the federal lien. Such a provision would produce bizarre results, and be grossly unfair to those who perfected their liens early. Moreover, it would cause additional circular priorities.

The Committee believes that, in any event, the purely procedural provisions of Title I should be made immediately applicable with respect to pre-existing liens, except that the period for bringing suits with respect to past transactions should not be shortened.

TITLE II: PRIORITIES IN INSOLVENCY PROCEEDINGS

Sec. 101. Priority in Insolvency.

Section 3466 of the Revised Statutes (Title 31, United States Code, Section 191) (relating to priority in insolvency) is amended to read as follows (present language to be deleted is struck through; new matter is in italics):

SEC. 3466. PRIORITY ~~ESTABLISHED~~ *IN INSOLVENCY.*

~~Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied, and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.~~

(a) PRIORITY ESTABLISHED. When an insolvent debtor of the United States is divested of the title or possession, or both title and possession, of all or substantially all of his property for the purpose of effecting general administration for the benefit of creditors otherwise than in bankruptcy, or when the estate of a deceased debtor of the United States is insolvent, the claims of the United States shall be entitled to priority of payment, subject to the following qualifications:

(1) ADMINISTRATIVE EXPENSES. Expenses of collecting, preserving and distributing the debtor's property, including federal, state and local taxes incurred during administration, may be paid prior to the claims of the United States.

(2) FUNERAL EXPENSES. Expenses of the funeral of a deceased debtor, to the extent that they are allowed by any court having jurisdiction thereof and have priority under applicable state law, may be paid prior to claims against the United States.

(3) WAGE CLAIMS. Claims against the debtor for wages and commissions due to workmen, servants, clerks, or traveling or city salesmen on salary or commission basis, whole or part time, whether or not selling exclusively for the debtor, may be paid before the claims of the United States, if and to the extent that they are entitled to priority under state law; but in no event shall such priority extend to earnings for any period over three months before divestment of the debtor's property in the manner provided in this section, nor to any amount in excess of $600 for each wage claimant. For the purposes of this paragraph, the term "traveling or city salesmen" shall include all such salesmen, whether or not they are independent contractors selling the products or services of the debtor on a commission basis, with or without a drawing account or formal contract.

(4) STATE AND LOCAL TAXES. Taxes legally due and owing by the debtor to any State or subdivision~~,~~ ~~*may*~~ *be accorded equal priority with*

taxes legally due and owing to the United States and may be paid before any claim of the United States for other than taxes.

(5) CLAIMS FOR RENT. Claims for rent to the extent of that legally due for actual use and occupancy during the three months before divestment of the debtor's property in the manner provided in this section shall, if entitled to priority under state law, be accorded equal priority with claims of the United States for other than taxes.

(b) CERTAIN LIENS PRESERVED. Notwithstanding subsection (a), nothing herein shall impair any lien in favor of the United States existing at the time of the divestment of the debtor's property in the manner provided in this section, nor any other valid lien or security interest which would have been entitled to priority over the claim of the United States immediately preceding such divestment.

(c) DEFINITIONS. As used in this section and section 3467—

(1) ASSIGNMENT FOR CREDITORS. An assignment, mortgage, or pledge of all or substantially all of the property of a debtor for the purpose of effecting general administration for the benefit of creditors shall be deemed a divestment for purposes of this section, whether or not provision is made for a reversion to the debtor.

(2) INSOLVENT. A debtor shall be deemed insolvent whenever his property which is subject to general administration for the benefit of creditors, as referred to in subsection (a), is insufficient, either at the commencement of the proceedings or during pendency thereof, to pay all his debts.

(3) CLAIMS. The term ''claims'' means those found to be legally due and owing by the debtor as of the date of the divestment of his property in the manner prescribed in subsection (a).

(4) CLAIMS OF THE UNITED STATES. The term ''claims of the United States'' shall be limited to claims which, from their inception, were owed to or insured or guaranteed by the United States.

(5) LIEN. The term ''lien'' shall not include any lien which first becomes effective upon the insolvency of the debtor, or upon distribution or liquidation of his property, or upon execution against his property levied at the instance of one other than the lienor.

(6) RULE IN BANKRUPTCY. This section is a law of the United States entitling the United States to priority within the meaning of the Bankruptcy Act, and in proceedings under that Act the claims of the United States shall have the degree of priority therein specified.

(7) STATE. The term ''State'' includes the Territories and the District of Columbia. Except as expressly provided herein, this section shall prevail over any law of a State, District or Territory to the extent inconsistent herewith.

Sec. 102. Liability of Fiduciaries.

Section 3467 of the Revised Statutes (Title 31, United States Code, Section 192) (relating to liability of fiduciaries) is amended to read as follows (present language to be deleted is struck through; new matter is in italics):

SEC. 3467. LIABILITY OF FIDUCIARIES.—Every executor, administrator, ~~or~~ assignee, or other person, who pays, in whole or in part, any ~~debt due by the person or estate~~ *claim against the insolvent debtor or estate* for whom or for which he acts before he ~~satisfies and pays the debts due to the United States from such person or estate~~ *pays the claims of the United States. against such debtor or estate which have priority thereto under the preceding section,* shall become answerable in his own person and estate to the extent of such payments for the ~~debts so due~~ *claims so owing* to the United States, or for so much thereof as may remain due and unpaid.

Sec. 103. Effective Date.

This Title shall be effective on the date of its enactment, and shall apply to administrations pending on such effective date, to the extent that distributions have not theretofore been made. In the case of any bond given to the United States before the date of enactment of this Act, if the amount recoverable by the surety out of the estate and effects of an insolvent or deceased principal, pursuant to the priority provided by Section 3468 of the Revised Statutes (Title 31, United States Code, Section 193), is reduced as a consequence of the provisions of this act, the United States shall indemnify the surety to the extent of such reduction, but the obligation of the bond shall not otherwise be affected.

Technical Explanation of Title II

SECTION 3466(a). PRIORITY ESTABLISHED

Present § 3466 of the Revised Statutes gives the United States first priority "Whenever any person indebted to the United States is insolvent." However, it has long been established that the insolvency (except in the case of a decedent's estate) must be manifested in one of the ways referred to in the second half of the section (voluntary assignment, certain attachments, or act of bankruptcy). *United States* v. *Oklahoma.* Most such events involve general administration of the debtor's property, and it has been stated that the priority was intended to apply only "when the possession and control of the estate of the insolvent is given to any person charged with the duty of applying it to the payment of the debts of the insolvent." *Bramwell* v. *U.S. Fidelity & Guaranty Co.* Since the rules prescribed are adapted to the distribution of property under general administration, and are inappropriate in other situations, proposed § 3466(a) would clarify the law by confirming that position.

It is proposed, in general, to apply the system of priorities provided in bankruptcy. The proposal would not, however, in proceedings governed by state

law, impose a federal system of priorities, but simply permits the states to grant certain priorities over or equality with the United States for the same classes which would enjoy such priority or equality if bankruptcy had occurred, in amounts no greater than the Bankruptcy Act would allow.

Administrative Expenses. These enjoy first priority in bankruptcy (behind recognized liens), and would be allowed the same priority in insolvency, under proposed § 3466(a)(1). It would be made clear that taxes incurred during the proceeding are administrative expenses, a matter on which there has been some doubt.

Funeral Expenses. Proposed § 3466(a)(2) has no counterpart in bankruptcy because the Bankruptcy Act does not apply to decedents' estates. The proposal, however, confirms the rule of decisions which, up to this time, have excepted funeral expenses from the federal priority in insolvency.

Wage Claims. Wage claims are entitled to second priority in bankruptcy, for not over three months and not over $600 per person. Within those limits, proposed § 3466(a)(3) would permit the States to prefer wage claims over non-lien federal claims in insolvency.

State and Local Taxes. Pre-bankruptcy federal, state and local taxes all rank equally under the Bankruptcy Act (in the absence of liens), and they rank ahead of all other federal claims. In insolvency, at present, state and local taxes are subordinated to all federal claims. Proposed § 3466(a)(4) would extend the bankruptcy rule to insolvency proceedings.

Claims for Rent. In bankruptcy, rent claims are behind taxes, but three months' rent stands equal with other federal claims. In insolvency, even if the landlord has a lien, all federal claims are preferred. *United States* v. *Waddill, Holland & Flinn.* Proposed § 3466(a)(5) would adopt the bankruptcy rule.

Section 3466(b). Certain Liens Preserved

Proposed subsection (b) preserves federal liens acquired before divestment of the debtor's property, so that such claims would not be subject to the priorities above discussed. It would also preserve, ahead of the priority of non-lien federal claims, any non-federal lien or security that would have been entitled to priority over the claim of the United States immediately prior to the divestment of the debtor's property. (See discussion of the definition of "lien" in subsection (c)(5).) This provision would assure, contrary to the suggestions made in some decisions, that any lien which would qualify for priority in the absence of insolvency would continue to enjoy such priority. It also would confirm the decisions which have held that section 3466 does not impair the position of a prior mortgage.

Section 3466(c). Definitions

Assignment for creditors. Proposed § 3466(c)(1) declares the existing law that an assignment, mortgage or pledge of all or substantially all of the debtor's property for the purpose of general administration for the benefit of creditors will bring section 3466 into operation. It is proposed, however, to change the rule adopted in some cases, under which a trust mortgage for the benefit of creditors escaped the effect of section 3466 by providing for a reversion to the

debtor if assets should exceed debts. *United States* v. *Gargill.* Where insolvency actually ensues, the provision for a reversion seems insufficient reason for distinguishing such an arrangement from an assignment for creditors.

Insolvent. Proposed § 3466(c)(2) embodies the "bankruptcy" definition of insolvency (insufficiency of assets to pay debts) which has been adopted by the courts under § 3466 (*United States* v. *Oklahoma*), including the rule that insolvency arising after divestment will suffice. *Hatch* v. *Morosco Holding Co.*

Claims. Proposed § 3466(c)(3) fixes the time of divestment as the "cut-off date" for claims to which the priority rules apply. Cf. *United States* v. *Marxen.*

Claims of the United States. The existing priority of debts "due to the United States" has been held to extend not only to debts initially owed to the United States, but also to debts which were guaranteed by the United States, which became obligations to the United States as a result of its satisfaction of the debt upon default. *Wagner* v. *McDonald; Korman* v. *Federal Housing Administrator.* That rule would be confirmed by proposed § 3466(c)(4), but the proposal would not support the further position which the Government has successfully maintained in a recent case, to the effect that, if the Government levies upon a claim which a taxpayer has against an insolvent debtor, the taxpayer's claim rises to top priority because it is asserted in the right of the United States. (*In re Cherry Valley Homes.*) For example, suppose the fund available for distribution is $100,000, and debts are $1,000,000, so that a 10 percent dividend may be expected. The taxpayer holds a $100,000 claim on which he could expect to recover $10,000. The Government then levies on the claim, and under present § 3466 asserts top priority, so that the fund is exhausted and the fortunate taxpayer gets $100,000 of his taxes satisfied from a fund which has been worth only $10,000 to him. Thus, people who had no dealings with the taxpayer at all, but who happened to be creditors of the same debtor, would suffer from the federal priority. The proposal would prevent that result, not only where the United States acquired a lien upon a private claim against the insolvent but where it took an assignment thereof (other than pursuant to an original guarantee).

Lien. In conformity with proposed § 6323(p)(4), and with the A.B.A.-approved bill, H.R. 5195, amending the Bankruptcy Act, proposed § 3466(c)(5) would exclude from the term "lien" a mere rule of priority which becomes effective upon insolvency or similar event, even if labeled a "lien".

Rule in bankruptcy. Section 64(a)(5) of the Bankruptcy Act (11 U.S.C. § 104(a)(5)) gives fifth priority in bankruptcy to (among others) debts owing to the United States which, under the laws of the United States, are entitled to priority. Heretofore, that has embraced debts covered by Rev. Stat. § 3466. Because of the language of proposed subsection (a), making it apply "otherwise than in bankruptcy," proposed § 3466(c)(6) is added to make clear that no change is intended with respect to the priority under § 64(a)(5) of the Bankruptcy Act.

State. The priority of the United States under § 3466 would, under proposed subsection (c)(7) as under present law, prevail over any state law to the contrary (although, within prescribed limits, state laws would be permitted to establish priorities as against the United States). It has been held under

present law, however, that special legislation of Congress for the District of Columbia, giving the District top priority, prevails over the general terms of § 3466. *United States* v. *Saidman*. The District would, under this proposal, be treated uniformly with the States.

Section 3467. Liability of Fiduciaries

Proposed § 3467 is not changed materially from present law, which imposes personal liability on the fiduciary who violates the federal priority. It is proposed, by adding the words, "which have priority thereto under the preceding section," to permit payment of claims to which the proposed amendment of § 3466 would give priority. It is not intended to change the present rule under which the fiduciary is relieved of liability if he had no reason to know of the claim of the United States. *Irving Trust Co.*

Effective Date

It is proposed that the amendments be made effective upon enactment and be applicable in pending administrations, except with respect to distributions already made.

Since sureties on bonds given to the United States are entitled to the benefit of the Government's priority, under Rev. Stat. § 3468 (31 U.S.C. § 193), a transitional provision would be necessary to protect those who had already given bonds and whose chance of recovery from the debtor would be reduced by alteration of the priority. Therefore, indemnity is provided for the surety in such cases.

TITLE III: CONSENT OF THE UNITED STATES TO BE SUED IN ACTIONS AFFECTING PROPERTY IN WHICH IT HAS A LIEN OR INTEREST.

Sec. 201. Removal from State Courts of Actions Against the United States.

(a) Section 1444 of Title 28, United States Code (relating to removal of foreclosure action against United States), is amended to read as follows (present language to be deleted is struck through; new matter is in italics):

SEC. 1444. ~~FORECLOSURE~~ ACTIONS AGAINST UNITED STATES

Any action brought under section 2410 of this title against the United States in any State *court* may be removed by the United States to the district court of the United States for the district and division in which the action is pending. *The district court may determine all issues therein or, in its discretion, where the case permits, may make final disposition of all matters placed in issue by the United States and all other matters within its original jurisdiction and may remand all other matters.*

(b) Section 1446(b) of Title 28, United States Code (relating to procedure for removal) is amended to read as follows (new matter is in italics):

(b) The petition for removal of a civil action or proceeding shall be filed within twenty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within twenty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

If the case stated by the initial pleading is not removable, a petition for removal may be filed within twenty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is or has become removable.

In an action against the United States which is removable under section 1444, a petition for removal may be filed within twenty days after receipt by the United States of a pleading, motion, order or other paper from which it may first be ascertained that any particular issue is raised concerning the right of the United States, which issue had not previously been so raised in the action.

Sec. 202. Actions Affecting Property in Which the United States Has a Lien or Other Interest.

(a) Section 2410(a) of Title 28, United States Code (relating to consent of the United States to be sued in actions affecting property on which the United States has a lien), is amended to read as follows (present language to be deleted is struck through; new matter is in italics):

Sec. 2410. ACTIONS AFFECTING PROPERTY ~~ON~~ *IN* WHICH THE UNITED STATES HAS A LIEN *OR OTHER INTEREST*

(a) Under the conditions prescribed in this section and section 1444 for the protection of the United States, *and subject to the limitations of section 2201,* the United States may be named a party in any civil action in any district court, ~~including the District Court for the Territory of Alaska,~~ or in any State court having jurisdiction of the subject matter, to quiet title to or for the *enforcement or* foreclosure of a mortgage or other lien upon *or involving the determination of rights in or liens upon any* real or personal property *or any obligation (including any action of interpleader or in the nature of interpleader, or any proceedings to condemn or requisition for purposes authorized by law, or for partition, or to subject a decedent's real estate to the payment of debts)* on which the United States has or claims a mortgage or other lien *or a title derived by the United States from the enforcement of a mortgage or other lien. It shall not be necessary to the jurisdiction that the complaint demand a sale of the property.*

(b) Section 2410(c) of Title 28, United States Code is amended to read as follows (present language to be deleted is struck through; new matter is in italics):

(c) ~~A judicial sale in such action or suit~~ *A judgment or decree entered in such action or suit or any judicial sale pursuant thereto* shall have the same effect respecting the discharge of the property from liens and encumbrances held by the United States, *or divesting a title derived from the enforcement thereof,* as may be provided with respect to such matters by the local law of the place where the property is situated. A sale to satisfy a lien inferior to one of the United States shall be made subject to and without disturbing the lien of the United States, unless the United States consents that the property may be sold free of its lien and the proceeds divided as the parties may be entitled. ~~Where a sale of real estate is made to satisfy a lien prior to that of the United States, the United States shall have one year from the date of sale within which to redeem.~~ In any case where the debt owing the United States is due, the United States may ask, by way of affirmative relief, for the foreclosure of its own lien.

(c) Section 2410 of Title 28, United States Code, is amended by redesignating subsection (d) as subsection (j) and by inserting after subsection (c) the following new subsections:

(d) If the United States has or claims a mortgage or other lien, or a title derived from the enforcement thereof—

(1) which is not filed or recorded in the place provided by law for the filing or recording of the lien or interest of the United States in the property involved in the proceeding, or

(2) for which the law makes no provision for filing or recording, or

(3) which arises or is filed or recorded in the place so provided on or after the date when an action or suit described in subsection (a) is commenced,

and if the United States is or becomes a party to the action and fails to assert such lien or interest by answer or amended answer, or, if the United States is not a party, if it has been given written notice of the action in the manner provided in this subsection and has not intervened to assert such lien or interest, the judgment or judicial sale pursuant thereto shall discharge or divest the lien or interest of the United States; provided, that if a sale is ordered, the United States may make claim to the proceeds of sale, at any time before the order of distribution is rendered, with the same priority as its lien or interest had against the property. The notice provided in this subsection shall be sent by registered or certified mail to the District Director of Internal Revenue for the collection district in which the property is situated, to the United States attorney for the district within which the suit is pending, and to the Attorney General of the United States. Such notice may be given at any time during the pendency of the action, but shall be ineffective if the notice is given less than 60 days before the trial (or entry of judgment if there is no trial) or if the United States petitions for intervention within 60 days after service of the notice and such petition is denied.

(e) Whenever any person having a lien upon any real or personal property, upon which a lien in favor of the United States also attaches or to which the United States acquires title derived from the enforcement of any lien, sells such property under process of law or pursuant to the instrument creating the lien of such person, or causes such a sale to be made, such sale shall have the same effect respecting the discharge of the property from liens and encumbrances held by the United States or any title derived by the United States from the enforcement of any lien or encumbrance as may be provided with respect to such matters by the local law of the place where the property is situated, if the person conducting such sale, or the person for whose benefit it is conducted, gives the District Director of Internal Revenue and the United States attorney for the district in which such sale is to occur, and the Attorney General of the United States, not less than 60 days notice in writing, by registered or certified mail, of the proposed sale, setting forth with particularity the time, place, and terms of such sale, and the nature of the lien of the United States (except that it shall not be necessary to set forth any lien referred to in paragraphs (1) and (2) of subsection (d) or any lien which arises or is filed or recorded on or after the date when the notice is mailed). If the property is sold on an established securities or commodities exchange or market (including a recognized ''over-the-counter'' market), such notice may be given at any time before or within ten days after the sale, but before disbursement of the proceeds; but failure to give such notice shall not impair the title conveyed. The lien or encumbrance of the United States, if discharged from the property pursuant to this subsection, shall attach to the proceeds with the same priority as it had against the property.

(f) Each officer of the United States upon whom notice is served pursuant to subsections (d) and (e), or his duly authorized delegate, shall promptly acknowledge receipt thereof. If the sender so requests, and provides a form therefor, such acknowledgment of receipt shall be in a form acceptable for recording or filing in the jurisdiction where the property is situated; provided, however, that the validity and effect of such notice shall not be affected by any failure of such officer or delegate to comply with the provisions of this subsection.

(g) ~~and where property is sold to satisfy a first lien~~ *In any sale which will discharge a lien* held by the United States, *as provided in subsections (c), (d) or (e),* the United States may bid at the sale such sum, not exceeding the amount of its claim with expenses of sale *plus the amount of prior liens,* as may be directed by *a person duly authorized by* the head of the department or agency of the United States which has charge of the administration of the laws in respect of which the claim of the United States arises.

(h) Notwithstanding any contract or state law to the contrary, a mortgage or other lien of the United States or a title derived by the United States from the enforcement thereof shall not be discharged, divested or otherwise affected by any judicial proceeding or judicial or non-judicial sale except in conformity with this section or with any other law of the United States. In any proceeding under this section, the lien or interest of the United States shall not be discharged or divested upon the basis of a finding that the value of the property is less than the aggregate of the interests having priority over the United States, unless such value was not controverted by the United States or was established by sale of the property.

(i) In any action or suit described in subsection (a), to which the United States is not a party, the United States shall have the right to intervene to assert any lien upon or interest in the property which is the subject of the proceeding. Such right of intervention shall be unconditional; except that, if notice was given as provided in subsection (d) and the United States did not petition for intervention within 60 days after service of such notice or within the time in which intervention is permitted unconditionally by applicable law or rules of procedure, whichever time expires the later, the court may, in its discretion, grant or deny or impose conditions upon such intervention. In exercising such discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether the rights of the United States asserted in its petition will be prejudiced if it is not a party to the action. Following such intervention, the provisions of this section, except subsection (b), and of section 1444 shall apply as if the United States had originally been named a party.

Sec. 203. Effective Date.

The amendments made by this Title shall apply in all cases in which final judgment has not been rendered or a sale has not been held prior to the date of enactment of this Act.

Technical Explanation of Title III

SECTIONS 1444 AND 1446. REMOVAL FROM STATE COURTS OF ACTIONS AGAINST UNITED STATES

Under Title 28, United States Code § 2410, the United States consents to be made a party in actions for mortgage foreclosure or others in which the enforcement or determination of rights in property is sought (as further discussed below). That consent is conditioned upon the right of the United States to remove the case to the federal court. That right of removal is exercised in only a minority of such cases, usually those in which it is anticipated that

an issue on the merits of the tax will arise (on which state courts are not experienced), or those involving a priority issue on which the state court may be out of sympathy with the federal rule.

Section 1446 now requires, in general, that the petition for removal be filed within 20 days after receipt of the initial pleading. At that stage of the proceedings, the pleadings of the taxpayer and of the rival claimants would not have been received, and the Government may be unable to tell whether the case ought to be removed. As a result, some cases may be removed, for protective reasons, that could as well have been disposed of in the state court. It may thus result in fewer removals to the federal court if, as the proposed amendment to § 1446(b) provides, the United States is allowed to defer the decision to seek removal until some right of the United States is put in issue for the first time by a pleading.

Usually, in such cases there is only one issue of real concern to the federal court. Other questions arising in a mortgage foreclosure action might frequently be better disposed of by a state court. It is suggested, therefore, that § 1444 be amended to permit the federal court, in its discretion, to dispose of the federal questions and remand the remaining issues to the state court (as is now permitted, in analogous circumstances, by Title 28, U.S. Code § 1441(c)).

SECTION 2410. ACTIONS AFFECTING PROPERTY IN WHICH THE UNITED STATES HAS A LIEN OR OTHER INTEREST.

Section 2410(a). Consent of United States to Suit

In 1931, Congress recognized the urgent necessity of granting the consent of the United States to be joined in mortgage or lien foreclosure actions, in order that federal liens might be adjudicated and would not remain as clouds on title of property sold under foreclosure. In 1942, the consent was extended to suits to quiet title. There are, however, situations where the need is equally great, but which do not fit the technical description of an action to foreclose or to quiet title. The proposed amendment would extend the consent to all cases involving the determination of rights in or liens upon any real or personal property, or any obligation. Among others, this would include an action of condemnation or requisition, an action for partition, and a proceeding to subject a decedent's real estate to the payment of debts. It would also be made clear that a debtor of the taxpayer, upon whom conflicting claims are made by the District Director and by adverse parties, may join the United States in interpleader or in an action in the nature of interpleader.

It was apparently intended when Congress broadened section 2410 to cover quiet title suits that jurisdiction should exist to declare rights in property even when no sale was prayed for. However, the contention is still frequently made by the Government that a prayer for a sale of the property is a jurisdictional requirement. That contention has been unsuccessful (*United States* v. *Morrison; Seattle Association of Credit Men* v. *United States*), but a sentence is in any event proposed to be added to § 2410(a) to confirm that a sale need not be asked. The United States is privileged, under subsection (c), to ask for a sale under a foreclosure of its own lien.

To make clear that the last mentioned provision, and the general broadening of the consent to suit are not intended to permit § 2410 to be used to obtain a declaratory judgment concerning tax liability, the provision is proposed to be made expressly "subject to the limitations of section 2201" (which excludes federal tax controversies from the declaratory judgment jurisdiction).

Under present § 2410(a), consent is given only with respect to property on which the United States has or claims a mortgage or other lien. If the Government has distrained upon property, bought at its own sale, and thus holds *title* rather than a lien, the consent to suit is inapplicable. *Sissman* v. *Chicago Title & Trust Co.; Wells* v. *Long.* A mortgagee or other lienor who takes enforcement action after that has occurred, even if his interest is superior to that of the United States, is left without a remedy. The proposed amendment would extend the consent to cases where the United States has or claims a title derived from the enforcement of a mortgage or other lien. (Of course, if such enforcement was by judicial action, the rule of *res adjudicata* might still bar the later proceeding under § 2410.)

Section 2410(b). Pleadings

This subsection is not proposed to be changed.

Section 2410(c). Effect of Sale or Judgment

In conformity with the action of the American Bar Association in 1956, it is proposed to strike from this subsection the one-year right of redemption from sale, which the United States now enjoys whether or not such right would exist under applicable law. Such right was originally provided in order to enable the Treasury, in proper cases, to obtain an appropriation to enable acquiring property which was sold under prior liens for an inadequate price. It was felt, however, that the existence of such right, which was rarely exercised, had a depressing effect on bids, which was the opposite of its intent. However, if the United States cannot redeem, it is thought that it should have the right to bid at the sale, a right which is now limited to situations where it is adjudged to have a first lien (and thus need not put up any money). See proposed § 2410(g), discussed below.

Technical amendments to subsection (c) are also proposed to conform to the amendments of subsection (a).

Section 2410(d). Lis Pendens

As between private parties, the commencement of a foreclosure suit or other action affecting title to property is notice to all the world (if prescribed requirements are complied with), and binds anyone thereafter obtaining an interest. Yet the United States has successfully maintained the priority of a tax lien which arose after an action to foreclose a mechanic's lien was pending and was enforced after such action had gone to judgment, execution and sale. *United States* v. *White Bear Brewing Co.* Even where a federal tax lien does not have priority, such a lien arising pending suit, and perhaps on the eve of sale, would constitute a cloud on the title and might necessitate last minute joinder of the United States or, if it is too late for that, the bringing of a new action.

Proposed subsection (d), which is entirely new, would bind the United States, under the doctrine of lis pendens, with respect to any mortgage, lien, or title derived from the enforcement thereof, which is not filed or recorded before the date an action (of the types described in subsection (a)), is commenced, including federal liens, such as the estate and gift tax liens, for which no filing is required. It would be the responsibility of the United States to intervene to assert any such liens which the plaintiff could not discover by search of the record, including after-arising liens. Since it would be an impossible burden for the Government to have to keep watch of the records of new lawsuits and correlate them with lists of persons indebted to it, for taxes or otherwise, it would be provided that the lis pendens shall bind the United States only if express notice of the action is given, to the District Director of Internal Revenue, the United States attorney, and the Attorney General. The District Director is included because most of the liens affected will be tax liens, and he will thereby be enabled to keep a file of pending actions against which he can check later liens that arise. Consideration was given to requiring such notice at the inception of the action, but such requirement might cause undue hardship, at least in the period before the bar has become familiar with the requirement. However, in order to assure that the United States has time to intervene, it would be required that the notice be given at least 60 days before trial (or entry of judgment if there is no trial); and, if the United States tries to intervene within sixty days after notice and is not allowed to do so, either as of right or in the discretion of the court, the effect of the notice would be vitiated. If the United States is already a party, because of some other lien, and thus is aware of the pendency of the action, no other notice would be required. Even if the United States fails to intervene, it may make claim to the proceeds of sale at any time before the order of distribution, with the same priority as its lien or interest had against the property.

As a practical means of reducing the volume of such notices, Congress might give consideration to providing (under this subsection and subsection (e) as well) that notice to the United States shall not be necessary if the value of the property is under a certain amount. Where the value is near the borderline, of course, the parties could always protect themselves by giving the notice.

Section 2410(e). Non-judicial Sale

This subsection conforms substantially to that approved by the American Bar Association in 1956. In harmony with the decision in *United States* v. *Boyd,* it would permit the holder of a prior mortgage containing a power of sale to divest the interest of the United States without going through a judicial proceeding. As a safeguard to the United States, it would be required that sixty days' notice of such sale be given to the District Director, the United States attorney and the Attorney General, setting forth the time, place and terms of the sale and the nature of the Government's lien. However, consistently with proposed subsection (d), it is suggested that there be added to the Association proposal a provision that it shall not be necessary to describe in the notice any lien or interest which is not filed or which is not required to be filed, or any which arises or is filed after the date of mailing such notice. A further additional provision would attach the federal lien or encumbrance to the proceeds, with the same priority as it had upon the property.

In certain situations, the requirement of 60 days' notice to the United States would be both unnecessary and undesirable. That would be the case with respect to securities and commodities sold on an established market (including an "over-the-counter" market), in enforcement of a pledge of such property. A 60 day delay of the sale might be disastrous for all parties concerned, including the United States as junior lienor. Since such a sale is on an open market, there is not the same need for advance notice to the United States as there is in the case of the ordinary forced sale on foreclosure. Therefore, the notice requirement would be made inapplicable in such cases, but the creditor would be required to notify the United States no later than 10 days after the sale, and before disbursing the proceeds, so that the Government may claim its share.

Section 2410(f). Acknowledgment of Notice

Because proof of the giving of notices under subsections (d) and (e) will be vital to a clear title, it would be required that each officer on whom such notice is served, or his delegate, shall promptly acknowledge receipt thereof. Since the requirements of different jurisdictions will vary concerning the form which such acknowledgment should take, in order to be recordable, it is provided that the person giving notice shall provide the acknowledgment form, if he desires it in any special form. Failure of the Government to comply with this requirement would not impair the effectiveness of the notice.

Section 2410(g). Bid by United States at Sale

Proposed § 2410(g) is derived from the last sentence of present § 2410(c), but is moved into a separate subsection in order that it may be applied both to judicial and non-judicial sales. Whenever a sale will discharge a lien of the United States (and not just a first lien, as at present), the Government would be permitted to bid. Since the satisfaction of liens adjudged to have priority over the United States would require the Government to put up some money, internal controls would have to be established by the departments concerned to limit the exercise of the power.

Section 2410(h). Restrictions on Discharge

Recent decisions have held that, if state law does not require the joinder of junior lienors in a mortgage foreclosure action, the subordinate lien of the United States can be divested without making it a party or giving it notice of the action. *United States* v. *Cless.* Proposed § 2410(h) would provide that the federal lien cannot be discharged, divested or otherwise affected by any judicial or non-judicial proceeding except in conformity with § 2410 (by joining the United States under subsection (a), or by complying with the lis pendens procedure under subsection (d), or giving notice of sale under subsection (e)), or under any other law of the United States.

This subsection would also deal with the problem raised by certain decisions which have discharged the federal lien, without sale, upon a finding that it had no value. Removal of the lien without sale is an appropriate remedy where it is found that the lien does not attach, but not where an issue of valuation is raised, which can readily be settled by a sale. It would be provided, therefore, that the Government's lien or interest shall not be divested or discharged on the basis

of a finding that it has no value, unless the value is not controverted or is established by sale.

Section 2410(i). Intervention by United States

A recent state court decision (*Barnes* v. *Hilton*) points out that no federal statute gives the United States a right to intervene where its interests are affected by a state court suit to which it is not a party. At present, the Government is dependent on state procedures for its right to intervene and protect its interests. Proposed § 2410(i) would give the United States an unconditional right to intervene where it has a lien or other interest in the subject matter of a suit in which it might have been joined under subsection (a). If the United States received the lis pendens notice provided in proposed § 2410(d) and failed to petition to intervene until after the time therein prescribed, its petition could be denied or conditioned by the court. Following such intervention, the suit would proceed as one initially commenced pursuant to § 2410, and could be removed to the federal district court under § 1444. (This would apply, of course, only to actions described in subsection (a), and would not permit the United States, on intervening in a probate proceeding, for example, to remove it to federal court.)

Section 2410(j). Release of Non-Tax Lien

Present subsection (d) would become subsection (j), without change.

Effective Date

It is proposed that the amendments made by Title III be effective upon enactment, and apply in any case in which final judgment has not been rendered or a sale has not been held before that time. The provisions are largely procedural, hence no reason appears for any delay in putting them to use.

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Mr. KEOGH (presiding). Thank you, Mr. Williams. You have, as usual, done your usual masterful job.

Are there any questions?

I know the chairman would like to be present before you step down.

Mrs. GRIFFITHS. Is your testimony, that which you have outlined here, all directed to this bill, H.R. 11256?

Mr. WILLIAMS. H.R. 11256 and 11290 are identical with one exception: I believe what is section 105(a) of H.R. 11256, introduced by the chairman, is somewhat different from that provision in H.R. 11290 in that in the chairman's bill, section 105(a) would add two new provisions to chapter 25 of subtitle (c) of the Internal Revenue Code dealing with employment taxes.

Section 3505, in substance, would say that in a case where a lender or other person directly pays a payroll, as a contractor or other person, who is short of funds, who has to complete a job, has to get the money somewhere, someone is advancing it, but instead of advancing it to the contractor or employer, pays directly the wages. In that situation they would become liable for the withholding taxes.

That extends it to a situation where a lender makes a loan knowing that it is for the purpose of meeting payroll, again a responsibility to take care of the withholding taxes would be imposed.

I believe that that provision is in both bills. But the second of these two provisions, which would, under the chairman's bill, be section 3506, would impose a liability—I will restate that.

It would give the United States a lien against whatever property the unpaid laborer himself would have a lien under State law in the event the withholding taxes are not paid.

We have not commented on this in the statement and do not propose to do so. But that latter provision, 3506, is the only one, I think, that is not in both bills.

Mrs. GRIFFITHS. Thank you very much.

Under all the circumstances, I think we ought to report this bill very soon.

Mr. KEOGH. Thank you very much.

Without objection, the attachment to your statement, Mr. Williams, listing the associations that have indicated evidence of support of the pending bills, has been made a part of your statement at its conclusion.

Mr. WILLIAMS. May I interject a comment, Mr. Keogh?

Due to one of these misunderstandings that happens, two very important, large, substantial, financial organizations whose names should have been on the attachment, were omitted.

No. 1, the American Bankers Association; No. 2, it is my understanding that the United States Savings & Loan League—I am not sure their name ought to be on there—also supports this measure and a separate statement has been filed.

Mr. KEOGH. Without objection, those organizations will be added to the list.

Mr. Betts?

Mr. BETTS. To clear up something in my mind, on page 14 of your statement, where you list the liens, have you listed them in the order of filing?

Mr. WILLIAMS. No.

Mr. BETTS. I assume the mechanic's lien was filed before the Federal tax lien. Is that correct?

Mr. WILLIAMS. Yes. You may assume that and the assumption would be sound. It wouldn't make any difference. Under current law it doesn't make any difference when a mechanic's lien is filed. It doesn't make any difference when the work is completed; it doesn't make any difference when it becomes a perfected final lien under State law.

Under the choateness doctrine it is invalid, as against a Federal tax lien, until the holder of that lien has brought a lawsuit, proceeded through the whole business to a judgment, I presume maybe until the appeal time has expired. Until it has become final, it would not make any difference.

This is the result of two priority systems, a Federal system and a State system, which simply are out of joint. When you apply the Federal system superimposed on a State system, that is the result.

That is the rule of choateness.

Mr. BETTS. I wanted to be sure that in the case you gave, the mechanics lien, even though it was filed prior to the Federal lien, would be junior.

Mr. WILLIAMS. This is lifted from the case of *White Bear Brewing Co.* v. *The United States*, or somebody, in the Supreme Court of the United States.

I will ask my computer to tell me how accurate this is, but I would guess that there have been a minimum of 10 efforts to get certiorari in other lien cases, trying to get something done about this, at least 10 times.

In that case, which was an Illinois case, the Federal tax lien did not arise and no assessment was made until long after the mechanic's lien had been filed and perfected under State law.

By the way, in that case, the mechanic's lienor had brought a lawsuit, the foreclosure proceedings were pending at the time the Federal tax lien arose. The Federal tax lien was given priority.

Mr. BETTS. So the mechanic's lien filed earlier would be effective as of the date of filing and would serve as constructive notice to the Federal Government; would it not?

Mr. WILLIAMS. Yes. It would take its rank in priority not as of the date that it was filed.

I might say, sir, that a mechanic's lien, by its very nature, is not going to be filed of record on the first day that the work starts.

The typical State law allows something like, say, 60 or 90 days after completion of the work, or completion of the furnishing of materials, for the mechanic's lien to file his lien. But when it is filed, then the lien, itself, dates back and is effective as of the beginning of the work.

That is the typical situation. That is what this bill provides.

Mr. BETTS. Thank you.

Mr. KEOGH. Are there any further questions?

Mr. Williams, I assume the statement of Mr. Johnson is to be included in the record?

Mr. WILLIAMS. I was about to ask Mr. Johnson about that. I will pass him the microphone.

Mr. KEOGH. Does Mr. Johnson wish to present his statement?

Mr. JOHNSON. I do not wish to speak, but I do wish the statement that I have submitted to be made a part of the record.

Mr. KEOGH. Without objection, the statement of Mr. Kenneth H. Johnson will appear in full in the record at this point.

(The statement referred to follows:)

STATEMENT OF KENNETH H. JOHNSON, THE AMERICAN BANKERS ASSOCIATION, WITH RESPECT TO H.R. 11256 AND H.R. 11290

My name is Kenneth M. Johnson. I am vice president and counsel, the Bank of America N.T. & S.A., San Francisco, Calif. I am here today representing the American Bankers Association as chairman of its special committee on Federal tax liens. The American Bankers Association is comprised of approximately 13,790 member banks.

The ABA favors the passage of H.R. 11256 and H.R. 11290 amending the law with regard to Federal tax liens but believes there should be improvements and clarifications made in certain respects as set forth in the comments below.

Since the bills are identical, except for the withholding provisions found in H.R. 11256, and the withholding provisions of section 3506 are not before the committee, the following comments are directed to H.R. 11256.

1. *Liability of lender for withheld taxes of borrower.*—Section 105 of the bill (p. 34 of bill) would add a new section 3505 to the Internal Revenue Code relating to liability of third parties for withheld taxes. Subsection (b) would impose liability upon a lender for withheld taxes of an employer if the lender supplies funds to or for the account of the employer for the purposes of paying wages of the latter's employees, with actual notice or knowledge that the employer does not intend to or will not be able to make timely payment or deposit of the employer's withheld taxes.

The wording of this provision raises a question whether a bank making loans to a business concern for general working capital needs might be deemed to be supplying funds in part for the purpose of paying wages within the meaning of section 3505(b). If so, the bank might be exposed to risks of liability under this subsection if the borrower was known to be encountering any financial difficulty.

It is understood that the intent of the subsection is to reach situations in which a third party, such as for example a surety on a performance bond, supplies funds specifically for the payment of wages of a contractor's employees. The subsection should be clarified to make the intended scope clear and to eliminate the risk that a bank making loans for general working capital needs might be liable for such taxes.

It is therefore recommended that the subsection be modified to read as follows:

"(b) PERSONAL LIABILITY WHERE FUNDS ARE SUPPLIED.—If a lender, surety or other person supplies funds to or for the account of any employer for the *specific* purpose of paying wages of the employees of such employer, with actual notice or knowledge that such employer does not intend to or will not be able to make timely payment or deposit of the amounts of tax required by this subtitle to be deducted and withheld by such employer from such wages, * * *."

2. *Nonjudicial sales of personal property.*—Section 109 of the bills would add a new section 7425 to the code. Subsection (b)(1) (p. 44 of bill) provides that a nonjudicial sale of property in which the United States has a lien, filed more than 30 days before the sale, shall be made subject to and without disturbing such lien unless the United States is given a prescribed notice of the sale at least 25 days before it takes place.

In the case of real property, there should ordinarily be no great difficulty in complying with the notice requirement.

As regards personal property, no objection is made to the notice requirement if the lien of the United States is superior to the lien or security interest being foreclosed, since in that situation the United States has the prior right. But where the lien of the United States is subordinate, the 25-day notice requirement will interfere with the rights of holders of prior liens whose interests may require an immediate sale.

In this connection it is noted that the similar provision in 28 U.S.C.A. 2410(c) applies only if the lien of the United States is superior.

Where securities subject to a declining market or perishable commodities are involved the 25 days' notice may cause losses to all concerned including the Government. Repossessed consumer goods also, in certain cases, decrease very rapidly in market value.

It is therefore recommended that subsection (b)(2) of section 7425 (p. 44 of bill) be changed to read as follows:

"(2) shall have the same effect with respect to the discharge or divestment of such lien or such title of the United States, as may be provided with respect to such matters by the local law of the place where such property is situated, if—

"(A) notice of such lien or such title was not filed or recorded in the place provided by law for such filing more than 30 days before such sale,

"(B) the law makes no provision for such filing, [or]

"(C) notice of such sale is given in the manner prescribed in subsection (c)(1), *or*

"(D) *personal property is sold to satisfy a lien superior to such lien of the United States.*"

3. *Security interest in contract rights.*—There may be a question as to the status, under the bills, of a present assignment, as security for a present loan, of rights to payments or performance to become due in the future under an existing contract. If such rights should be deemed after-acquired property of the borrower, coming into existence only when "earned" by performance of the borrower's obligations under the contract, an intervening filed Federal tax lien against the borrower might take priority over the security interest previously created and perfected. Such an interpretation would imperil the security relied on in many loans involving millions of dollars. Examples are loans to motion picture producers secured by assignment of future proceeds of existing distribution contracts, and loans to pipeline companies secured by assignment of future proceeds of existing gas sales contracts or by assignments of the pipeline companies' rights to gas to be purchased in the future under existing gas purchase contracts. Many other examples could be cited. The volume of such institutional financing of business concerns is very large.

This point should be clarified. Accordingly it is recommended that there be added at the end of subsection (h) of section 6323 (p. 14 of bill) the following new paragraph:

"(6) PROPERTY.—The term 'property' includes rights to future payments or performance under an existing contract."

4. *Purchase money security interests.*—Some of the language in section 6323(f)(2)(B) (p. 9 of bill) might be taken to cast doubt on the general priority of purchase money mortgages or other purchase money security interests as against a previously filed Federal tax lien. It is understood that no such inference is intended. This should be made clear, and accordingly it is recommended that there be added immediately following paragraph (7) of subsection (d) of section 6323 (p. 6 of bill) a new paragraph, as follows:

"(8) PROPERTY SUBJECT TO A PURCHASE MONEY SECURITY INTEREST.—With respect to property subject to a purchase money security interest, as against a holder of such security interest if under local law such security interest has priority over preexisting security interests covering after-acquired property of the purchaser."

5. *Right of setoff.*—The American Bar Association bill (sec. 7403(e)) would have provided express recognition of the right of setoff of a person obligated to a taxpayer, as against a Federal tax levy on the obligation owing by such person to the taxpayer, thus removing the cloud created by the decisions in *Bank of Nevada* v. *U.S.*, 251 F. 2d 820, and *Bank of America* v. *U.S.*, 345 F. 2d 624.

The present bill does not include any such provision. A denial of the right of setoff appears to be harsh and contrary to general principles of law as for example in bankruptcy where setoff is allowed. It is strongly urged that a provision covering this matter be added to the present bill. A simple solution would be to add a new paragraph (9) to subsection (d) of section 6323 reading as follows:

"(9) RIGHT OF SETOFF.—With respect to deposits received or other credits arising at any time in good faith in the ordinary course of business of the person obligated therefor, as against such person's right, if valid under local law, to setoff the same against obligations which were acquired at any time by such person for an adequate and full consideration in money or money's worth,

provided such right of setoff is exercised prior to or promptly after levy by the Secretary or his delegate upon such deposits or credits."

6. *Leasehold mortgages.*—There is a question whether under section 6323(e) (p. 7 of bill) the priority of a mortgage with respect to interest and expenses accruing after the filing of a Federal tax lien would cover payment of ground rent by a leasehold mortgagee in order to preserve the leasehold which is the security. Perhaps the word "preserve" in subparagraph (4) is intended to cover the point. This should be clarified in the congressional committee reports on the bills.

7. *Actual notice or knowledge.*—The problem of what constitutes actual notice or knowledge to an organization is a serious one for banks, especially those having many branches, as well as for business corporations with numerous departments or offices. Often a branch of a bank may be extending credit to a local branch or division of a business customer and at the same time a branch of the same bank many miles distant may be extending credit to another department or division of the same corporation. It may be wholly impractical from the standpoint of cost of operation for the bank to attempt to maintain any single central credit file to collect all credit information from all branches with respect to all customers except where very large credits are involved.

This problem is recognized and explicitly dealt with in section 1–201(27) of the Uniform Commercial Code. It is understood that subsection (i)(2) of section 6323 (p. 14 of bill) which incorporates the first part of the Uniform Commercial Code definition, is intended to state the same rule as the Uniform Commercial Code. However, the omission of the last part of the Uniform Commercial Code definition leaves the possible implication that every organization is required, for its own protection, to establish procedures, however costly, whereby knowledge in one part of the organization would always find its way to another part of the organization.

Accordingly it is recommended that subsection (i)(2) be changed to conform substantially to the Uniform Commercial Code definition, as follows:

"(2) ACTUAL NOTICE OR KNOWLEDGE.—For purposes of this subchapter and section 3505, an organization shall be deemed for purposes of a particular transaction to have actual notice or knowledge of any fact from the time such fact is brought to the attention of the individual conducting such transaction, and, if such fact is known to another individual in such organization, in any event if and from the time when such fact would have been brought to the attention of the individual conducting such transaction if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information."

Mr. KEOGH. Thank you, gentlemen. Mr. Williams, if you will, please remain in the room and await the return of the chairman. I am sure he will wish to further interrogate you upon his return.

I will then ask Mr. David Q. Cohen to come forward.

STATEMENT OF DAVID Q. COHEN, COUNSEL, AMERICAN INSURANCE ASSOCIATION

Mr. KEOGH. Will you give your full name and identification, Mr. Cohen?

Mr. COHEN. I am David Q. Cohen. I am admitted to the New York Bar and employed in the capacity of counsel by the American Insurance Association, 110 William Street, New York City. The association is a trade association with a membership of 184 capital stock insurance companies engaged in underwriting fire and casualty insurance policies and in many instances fidelity and surety bonds. Most of these companies operate nationally.

For approximately 26 years, I have devoted all my activity on behalf of the association (and one of its predecessors) to problems, legislative and other, affecting the interests of our membership underwriting fidelity and surety bonds.

The association and our membership are grateful to your committee for the opportunity to present their views on H.R. 11256 and H.R. 11290. Except to the extent hereinafter noted, we endorse the objective of these bills.

We are concerned with some provisions of the bills which are of unique interest to the surety industry. Our subsequent comments will concern themselves with the following matters:

A. The definition of "mechanic's lienor" is too limited.

B. The definition of "security interest" is too limited.

C. The proposed amendment to the Miller Act needs safeguards for the surety and the construction industry.

D. The effective date for the legislation, if enacted, should have prospective effect only.

A. THE DEFINITION OF "MECHANIC'S LIENOR" IS TOO LIMITED

The definition of "mechanic's lienor," appearing on page 13 of both bills, is too restrictive and should be expanded to include persons who furnish labor and material on public works contracts.

The term as defined in the bills means "any person who under local law has a lien on real property or on the proceeds of a contract relating to such property, for services, labor or materials."

This definition is not broad enough to protect the "equitable lien" of labor and materialmen on public works. The definition would give a priority to the lienor as against the Federal tax lien to those who labor on, or supply material, on private construction work, and to public work only in those few States where moneys deriving from public works projects are specifically lienable as for example, in New York, New Jersey, and California.

With few exceptions in American statutory law, labor, and materialmen have no mechanic's lien rights on public works or on money payable for work in constructing same. This rule of law, based upon public policy, led to development of surety bond coverage for labor and materials supplied on public works jobs. The interest of unpaid labor and materialmen in moneys deriving from public works contracts has been generally recognized by the courts, Federal and State, as giving them a right in such moneys in the nature of an "equitable lien."

A recent restatement of the concept was made by the U.S. Supreme Court in *Pearlman* v. *Reliance Insurance Co.* (371 U.S. 132, 141, Supreme Court 232, 237 (1962)) wherein the Court said:

> We, therefore, hold in accord with the established legal principles stated above that the Government had a right to use the retained fund to pay laborers and materialmen: That the laborers and materialmen had a right to be paid out of the fund; that the contractor, had he completed his job and paid his laborers and materialmen, would have become entitled to the fund; and that the surety, having paid the laborers and materialmen, is entitled to the benefit of all these rights to the extent necessary to reimburse it.

The "established legal principles stated above" are discussed by the Supreme Court in its opinions and are found in *Prairie State Bank* v. *U.S.* (164 U.S. 227, 17 Supreme Court 142 (1896)) and *Henningsen*

v. *U.S. Fidelity & Guaranty Co.* (208 U.S. 404, 28 Supreme Court 389 (1908)).

These early cases were widely followed by State courts and the *Henningsen* opinion, in particular, is the foundation of the salutary notion that labor and materialmen have an equitable right in the contract moneys.

The *Pearlman* case reaffirms the traditional doctrine and it has even brought about an overruling of a previously contrary minority view held in Pennsylvania. See *Jacobs* v. *Northeastern Corp.* (206 A. 2d 49 (Pennsylvania Supreme Court 1965)).

As the definition on page 13 of both bills now reads, it would clearly protect mechanic's lienors on private work, and on public works only in that handful of States where the proceeds of a public works contract are lienable by statute. Apparently, the definition, as against the impact of the Federal tax lien, gives no protection to labor and materialmen on public works by its failure to recognize their equitable lienor status in more than 40 States.

It seems to us that labor and materialmen should be protected against the Federal tax lien across the board whether the labor or material is furnished under a private or public contract.

In the absence of the amendment, hereinafter suggested, persons laboring on, or supplying material to, public works, will find themselves in an inferior position as against the tax lien, in the event the amount of the surety bond on the project is inadequate in amount, or in the event of insolvency of the surety.

This would defeat one of the presumed objectives of the bills to improve the present judicial position of those whose material or labor contributed to the public or private improvement.

To establish a parity of treatment for all labor and materialmen we urge that the definition be amended at the end of line 11 of page 13, by adding after the words "has a lien" the words "either statutory or equitable."

B. THE DEFINITION OF "SECURITY INTEREST" IS TOO LIMITED

The word "security interest" is defined on pages 13 and 14 of H.R. 11256 and page 14 of H.R. 11290 to mean "any interest in property acquired by contract for an adequate and full consideration in money or money's worth for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability."

The definition is too restrictive as against sureties. Page 9, line 23, et seq., recognizes that a surety may have a "security interest" in the proceeds of a contract in connection with which the suretyship was undertaken.

The surety's security interest has been widely held to arise from the equitable doctrine of subrogation as can be seen from a reading of the *Prairie State*, *Henningsen*, and *Pearlman* decisions of the Supreme Court previously referred to herein.

Notwithstanding this fact, the definition limits this security interest to "any interest in property acquired by contract." Although the rest of the definition clearly comprehends a suretyship relationship, the definition read as a whole does not clearly encompass an important aspect of the normal suretyship relationship.

The invariable purpose of suretyship is "securing payment or performance of an obligation or indemnifying against loss or liability."

We, therefore, urge that the definition of "security interest" be amended on page 14 by interpolating after the word "any" the words "contractual, equitable, or statutory" and by deleting the words "by contract." The amendment in context will then read "means any contractual, equitable, or statutory interest in property * * *."

It should be noted that our proposed amendment follows language on page 15 of the bill confirming subrogation rights—subrogation being one of the most important pillars of a surety's security interest, as has been previously demonstrated.

C. THE PROPOSED MILLER ACT AMENDMENT NEEDS SAFEGUARDS FOR THE SURETY AND THE CONSTRUCTION INDUSTRY

At pages 37 and 38 of H.R. 11256, and at pages 34 and 35 of H.R. 11290, are found proposed amendments to section 270a of 40 U.S.C., a section of the Miller Act.

A new subsection (d) would be added to the section. The effect of the amendment would be to impose certain liability for tax withholdings on all performance bonds furnished by prime contractors on Federal public works contracts subject to that act.

This extension of the surety's liability is, of course, a departure from the performance bond coverage which has been traditional since 1894.

While the American Insurance Association cannot speak for surety companies that are not included in its membership, it is only fair to say that some of our members are opposed to the proposed extension of the performance bond coverage to tax withholdings. Others reluctantly acquiesce provided the new liability is circumscribed with reasonable safeguards for the surety and its contractor clients.

It is probable that a similar division of opinion will be found among nonmember companies. It is significant that these views were expressed prior to recent press accounts indicating a probability of increased Federal tax rates and increased percentages of withholdings as contrasted with the present system of withholding a flat 14 percent of earnings.

If these increases eventuate, the impact of the proposed new liability on sureties will be considerably magnified. By and large, contact bond sureties have no responsibility for such tax withholdings at the present time. Knowledgeable contract bond underwriters are aware that employer withholding liabilities for employee wages can reach fantastic and appalling sums.

For example, in *Central Bank* v. *U.S.* (315 U.S. 639, 73 S. Ct. 917 (1953)), the amount claimed by the Government from the contractor employer amounted to about $617,000 inclusive of interest and penalties.

In the discussions with Government officials on the general subject of tax liens, and so forth, which preceded the conference held under the auspices of Dr. Woodworth, chief of staff of the Joint Congressional Committee on Internal Revenue Taxation, and also at that conference, such officials argued that the taxes "were in the nature of wages" and should be covered by bonds such as the Miller Act payment bond, protecting labor and material furnished to the prime contractor and his subcontractors. This was the same argument which

had repeatedly been made to the courts by Government but with little success.

For a recent scholarly and excellent review of the persistent, but generally unproductive, attempts by the Government to obtain recognition of its view by the U.S. Supreme Court, Federal courts of appeal and others, see Kerrigen, "The Surety's Liability for Payroll Taxes Under Payment and Performance Bonds" (31 Insurance Counsel Journal 651, October 1964).

Assuming for the sake of argument that the Government's view is correct, it seems to us that consistency in the Government's theory as to the nature of the liability would require that if withholding taxes measured by wages are to be covered, the right to recovery should be conditioned upon reasonable notice to the surety of the Government's claim and a reasonable cutoff period on suits to recover.

It is to be noted that labor pursuing rights on the Miller Act payment bond are subject to the notice, and limitation on suit, requirements of that act (see 40 U.S.C. 270b).

Since sureties are not in a position to police the taxpaying activities of contractors they bond, and do not have any access to Government to obtain information concerning nonpayment, sureties, absent a notice requirement, will find themselves under very substantial liability to the Government for withholding taxes without any opportunity to protect themselves.

This risk is extremely magnified, furthermore, if the surety is subject to suit by the Government at any time it sees fit. Without a suit limitation, the surety will be faced with potential claims for tax liability many years after the work had been completed and accepted.

The construction industry for some years now has been going through a condition of so-called profitless prosperity, meaning thereby, substantial opportunity for obtaining work but with very little or no profit therefrom.

If the surety industry is now for the first time to be saddled with liability for Federal construction contractors' derelictions in paying over withheld taxes on employee wages and without safeguards of the kind heretofore mentioned, it is quite likely that many potential bidders and low bidders for Federal public works jobs will not, after the passage of the proposal in its present form, be able to qualify for the surety bonds required by the Miller Act.

It is obvious that the side effect of more stringent underwriting to protect against the new liability will be to narrow the competitive base of bidders. It may well mean, too, that some bidders, in the class of small businessmen who now qualify for Federal contract bonds, may find themselves with no market for their bond requirements.

If this condition were forced to occur by reason of an unqualified liability of the surety for the withholding taxes, Government policy to assist small businessmen in obtaining a fair share of Government contracts may well be impeded.

We, therefore, urge that the proposal appearing on page 38 of H.R. 11256 and page 35 of H.R. 11290 be amended to read as follows:

(d) Every performance bond required under this section shall be construed to provide coverage for taxes imposed by the United Staes which are collected, deducted, or withheld from wages paid by the contractor in carrying out the contract with respect to which such bond is furnished, provided the surety or sureties are given written notice by the United States of the nonpayment of

such taxes within 30 days after the date such taxes shall be commenced by the United States after the expiration of 1 year from the date such taxes become due and payable.

The foregoing redraft differs from the language appearing in the bills in that the words "be construed to" have been substituted for the word "specifically" and the proviso as to notice of claim and suit has been added after the word "furnished". The reason for the proviso has already been explained.

The need for the substitution of language for the word "specifically" arises from the fact that the General Services Administration, which has jurisdiction over the standard forms of Government contracts and bonds, as of June 1964, revised such bond forms and mandated the use of the new forms as of March 1, 1965.

The new forms have been printed by the Government Printing Office and have been reproduced and publicized in the Armed Services Procurement Regulations and in the Federal Procurement Regulations.

Furthermore, the bond forms have been printed by many of our member companies and have been distributed among their branch offices and agency forces. If the performance bonds must "specifically provide," all such performance bond forms will, as a consequence, have to be withdrawn and a new one promulgated by GSA.

Redistribution will become necessary at great expense not only to the Government but to all surety companies underwriting Federal contract bonds. We see no reason for such useless expense when the desired coverage can so readily be achieved by a mere requirement in the statute that the performance bond "be construed to provide coverage."

D. THE EFFECTIVE DATE FOR THE LEGISLATION, IF ENACTED SHOULD HAVE PROSPECTIVE EFFECT ONLY

We assume that the effective dates for the Miller Act amendments appearing on page 56 of H.R. 11256 and page 53 of H.R. 11290 (now shown as Jan. 1, 1965) will be changed so as not to raise any problems of retroactive imposition of liability on the sureties affected.

Mr. KEOGH. Thank you very much, Mr. Cohen.

Let me ask you, have you previously submitted these views to Mr. Williams' committee?

Mr. COHEN. These views have been previously submitted, substantially, to Dr. Woodworth, who is chief of staff for the joint committee, and I believe in a number of instances copies have been given to Mr. Williams and also to Mr. Plumb. But that was a courtesy.

Mr. KEOGH. Are there any questions?

Mr. BYRNES. I think your suggestion on substituting "construed" for "specifically" probably has a great deal of merit. It accomplishes the same objective. It avoids the necessity of having all of these contract forms rewritten.

Concerning this notice situation, I think imposing a 30-day limitation quite rigid and may impose an unreasonable burden upon the Government. Really, what you are looking for is some cutoff point; the 30-day period is not as important as the need to provide a cutoff point.

Mr. COHEN. It is all part, I would say, of some kind of a cutoff on the Government's claim. As of now, no statute of limitations runs against the Government, and the claims could go on forever.

Frankly, if I were sitting as an administrative official of the Internal Revenue Service, and if this were the law in the form presented in the bill, considering the backlog in my office of what had to be handled about delinquent claims, I would, as a matter of course, say to my people, "Don't pay any attention to the tax situation as far as any bonded Government contractor is concerned. We can go after them any time from now until doomsday."

We would be sitting there holding the bag without actually knowing what our liabilities are.

Mr. BYRNES. But I think mechanic's liens normally involve a 60- to 90-day period.

Mr. COHEN. Yes. It is customary in the mechanic's liens laws in the various States of the Union to provide that action on the enforcement of the mechanic's lien must be begun very often in 60 days, in the case of public works, and on private work 1 year, after the furnishing of the work.

Mr. BYRNES. What about a notice of filing?

Mr. COHEN. They invariably have notice requirements. The mechanic's lien has to be filed.

Mr. BYRNES. I am talking now about the suggested 30-day period.

Mr. COHEN. Thirty days? Offhand, I wouldn't know whether that would be in the mechanic's lien statutes or not, but there are 60- and 90-day provisions in there.

Mr. BYRNES. It would seem to me that the 30-day period is rather rigid. It is nice for the surety companies to have a 30-day period, but I am not sure that it would be an equitable one as far as the entire program is concerned.

Mr. COHEN. We must bear in mind, sir, that this liability which would be imposed upon us is not traditional coverage. We have no idea of what this would mean to us in terms of losses. We suspect it might mean a great deal. For 70 years we have been dealing with traditional performance and bond coverage; to wit, that the contractor will perform the contract in accordance with the plans and specifications and the contracts. We have assumed no tax liability there.

That has been the situation since 1894 on the Federal public works contractors. If there is to be this extension, if we are to be saddled with it, we are looking for some kind of reasonable protection so this doesn't go on forever, where the taxes could be piled up and piled up.

As for example, that which happened in the Central Bank against the United States. In a rereading of the case, within a year and 3 months, and this was a ship repair contract where the Navy was bringing in ships to be repaired, within a year and 3 months the withholdings totaled $545,000 which, with penalties and interest, at the time of the suit, came to $617,000. Those are appalling liabilities.

Fortunately, no surety was involved there. But it indicates what you do have. We do know this, too——

Mr. BYRNES. Fortunate for who that there wasn't any surety?

Mr. COHEN. Fortunately for the surety there was none; unfortunately for the Government.

Mr. BYRNES. That is all.

The CHAIRMAN. Are there any further questions of Mr. Cohen?

If not, Mr. Cohen, we thank you for your statement and coming before the committee.

Will Mr. Williams return to the table, please?

FURTHER STATEMENT OF LAURENS WILLIAMS

The CHAIRMAN. Again, I want to congratulate you as chairman, and the other members of your task force, for the work that you have done in helping us to find answers to what is undoubtedly a very difficult situation.

We thank you and the others for coming before the committee this morning and making your statement. I apologize that I had to leave the hearing room for a part of the time.

Some confusion evidently exists with respect to what was said in the press release and what is in the two bills. If you will reread the press release I think it is a little clearer on a second reading.

What we were referring to is that portion of H.R. 11256 not included in Mr. Byrnes' bill, H.R. 11290. That is what we were omitting from the purview of this hearing and the executive session of our committee—that is, that part of section 105(a) to which you referred as section 3506.

Actually, as I understand it, section 3505(a) reflects in some measure existing law. The part of the bill which begins on page 34, line 1, is section 3505(b). That is not in existing law; is that right?

Mr. WILLIAMS. I think that is correct, sir.

The CHAIRMAN. Is there objection that you know about, among the people who worked with you on this task force committee, with respect to (b)?

Mr. WILLIAMS. There is objection, Mr. Chairman, to the current draft. May I explain?

The CHAIRMAN. Yes.

Mr. WILLIAMS. What appears in H.R. 11256, page 34, subsection (b), personal liability where funds are supplied——

The CHAIRMAN. That is new language, is it?

Mr. WILLIAMS. Yes.

The CHAIRMAN. That is not in existing law. Are we correct in thinking that paragraph (a) of section 3505 reflects existing law?

Mr. WILLIAMS. I think not, sir.

The CHAIRMAN. What I am getting at is this: It is not that it is in the code, itself, in the exact identical language of section 3505(a), but it has been my understanding that section 3505(a), as spelled out in the bill, reflects existing law.

Mr. WILLIAMS. I think it would be correct to say that while the section does not appear in the code, as such, the current law in effect already does this.

The CHAIRMAN. Come up, Mr. Cohen. I want to get you in on this if you have a difference of opinion.

Go ahead, Mr. Williams.

Mr. WILLIAMS. I think the situation is this, that the current definition of an employer is currently broad enough to cover what, in effect, you would have under section 3505(a).

The CHAIRMAN. That is what I thought.

Mr. WILLIAMS. So that the technical answer to your question, which I am sorry I gave, is that it is not, this provision is not, in the law, but the equivalent purpose and effect is there.

The CHAIRMAN. By court decisions?

Mr. WILLIAMS. That is right.

The thing that is new is subparagraph (b) of 3505.

The CHAIRMAN. Before we go to part (b), Mr. Cohen evidently was taking disagreement with the statement I made and your response to me.

Mr. Cohen?

Mr. COHEN. I do not believe that subdivision (a) of section 3505 is an accurate statement insofar as sureties are concerned where they finance the contractor or make moneys available to him for purposes of completing the job.

I think the cases hold to the contrary.

The CHAIRMAN. What is your understanding of how the present law as developed by courts, regulations and otherwise, differs from (a)?

Mr. COHEN. I think if it can be shown that the person who is supplying the money is technically within the sense of the IRS regulations an employer in the common law sense, then there would be liability under the statute and under the regulations for this withholding.

The CHAIRMAN. Isn't that what we are saying in (a)?

Mr. COHEN. No; I don't think so, because it talks in terms of who is not an employer under such sections pays wages. It says—

for purposes of section * * * if a lender, surety, or other person who is not an employer under such section pays wages directly to an employer, employee, or groups of employees—

and so forth.

The CHAIRMAN. But that is under the sections of the Code that this is referring to. Is he, aside from sections 3102, 3302, 3402, and 3403, by court decision and regulations carrying out the court decisions, an employer though he is not spelled out in the sections referred to here?

Mr. COHEN. If I may put a case, sir, a contractor goes broke, he hasn't paid labor and he hasn't paid material. A claim is made against the surety, let's say, for wages for 2 weeks consisting of $150. When the surety pays that $150 to that man they pay the wages and they make no deduction, at the present time, for the tax bite on that.

That is something which he has to take care of in the same way when I pay my doctor or my lawyer I expect him to pay his taxes out of what I pay him. So to that extent, as far as sureties are concerned, this section would not be present law.

The CHAIRMAN. And you understand, then, that under this section the surety would have to make deductions for tax as it made payments?

Mr. COHEN. It is quite possible that that would be the sense of the construction here, that if in the future a claim for labor were made, in the case I posited, that the surety, in order to protect himself under this section, might have to withhold the tax, the conceived tax bite, on that amount of money.

How it would be done by way of reporting it to the Government and the mechanics of it on the part of the surety is beyond me. Is the surety going to be expected then to issue a withholding statement to that man? All of that is not very clear here.

The Chairman. What I am concerned about is this, Mr. Cohen and Mr. Williams: I had thought that we were merely restating what is case law in 3505(a) of my bill and in the corresponding provision in Mr. Byrnes' bill as well. I understood, that the (b) part was new and that 3506 is new.

If there is really a question about whether 3505(a), itself, is merely a restatement of case law, what effect do we have if we should decide in the executive session of the committee that we leave out all of section 105(a), which is 3505(a), (b), and so on, as well as 3506? What do we do?

Will we add further confusion to a confused situation or not?

Mr. Williams. Mr. Chairman, all of section 105, both the 3505 and 3506 part, largely appear by reason of the Treasury Department's interest.

The Chairman. They were not in your draft.

Mr. Williams. I think it would be unwise for me to attempt to discuss the merits or demerits of these. I think I should say that whereas there was originally confusion as to exactly what was and what wasn't to be considered at this hearing under section 105, I believe that that confusion was straightened out 48 hours ago, Monday, and there has been no confusion on the part of others in the last 2 days as to this.

I believe it has been understood that what appears under section 3505 was to be the subject of hearings today.

The Chairman. The hearing notice clearly states only that part which varied from Mr. Byrnes' bill was to be deleted, that is true. But I am not concerned about that, Mr. Williams. What I am concerned about at this point is whether or not section 3505(a), as I understand, is a restatement of case law or whether it isn't, whether we are going beyond it.

If we are going beyond it, is it proper for us to go beyond case law?

Mr. Cohen. In my opinion, sir, as I have already stated, it goes beyond the case law.

The Chairman. That was the purport of your statement to us that I missed, that it goes beyond case law?

Mr. Cohen. Yes. Particularly as far as the sureties are concerned.

The Chairman. Do you know what the situation is with respect to banks or savings and loans?

Mr. Cohen. I have no idea.

The Chairman. But you do think with respect to the surety side, it goes beyond existing law.

Mr. Cohen. This is an attempt to impose liability on people who are not employers. It says so directly, as I read it.

The Chairman. That is right.

Mr. Cohen. To the extent that it attempts to impose liability on people who are not employers at the present time under the going rules, it is new, because you are imposing this withholding thing on somebody who is not an employer.

As I conceive the present law you can only require an employer to withhold.

The Chairman. Paragraph (b) very definitely imposes this liability on someone who is not an employer, but under circumstances that I think perhaps are reasonable and one could justify.

Mr. WILLIAMS. The problem under that section, Mr. Chairman, relates to the meaning of the portion of the reading "actual notice or knowledge."

What do those terms mean? What does it mean that the liability arises when this payment of wages is made with actual notice or knowledge? That is, that the employer is not going to be able to pay them or is not going to pay them.

There is, in another provision of this bill, a definition of the term "notice or knowledge." This is the usual approach in drafting a statute, of course. The definition of notice or knowledge, which is in both of these bills, is the exact definition of those terms found in the original version of the Uniform Commercial Code.

The Uniform Commercial Code encountered the same problem, and an extensive amendment spelling this out was adopted and is now the law in almost all of the States. This occurred in 1962. Part of the torturous history of these bills is that some of this draft originated prior to 1962.

All I think, on this side of the table, have recommended to the Treasury and to the staff that the definition of notice or knowledge in these bills be amended to include the current definition found in the Uniform Commercial Code which, I believe, I can state, would make this provision much more satisfactory, or at least unsatisfactory, to all on this side of the table.

In short, that has been the principal objection, I believe, or which has at least come to my attention, from industry groups to section 3505(b), the problem of what this notice or knowledge means.

With this change, that objection would be largely eliminated.

The CHAIRMAN. Would you do us the favor, you and Mr. Plumb, of preparing an amendment?

Mr. WILLIAMS. It has been done, sir. It is in the hands of the staff.

The CHAIRMAN. Let me ask you, Mr. Williams, what recommendation do you make now to us about section 105(a)? Would you say that we would be better off in the long run, the law would be better, itself, if we eliminate all that is within section 105(a)?

Mr. WILLIAMS. So far as the other members of this task force to which I referred are concerned, I am confident that they would prefer the deletion of all of section 105.

On behalf of the American Bar Association, I must say to you that the board of governors of the American Bar Association did expressly endorse and approve precisely 11256 as it appears before you, 3505 and 3506 being a part of the bill which they have expressly endorsed and recommended to you for enactment.

(The following letter was received by the committee:)

LAW OFFICES OF SUTHERLAND, ASBILL & BRENNAN,
Washington, March 3, 1966.

HON. WILBUR D. MILLS,
Chairman, Committee on Ways and Means,
Longworth House Office Building,
Washington, D.C.

DEAR MR. CHAIRMAN: It has come to my attention that a remark I made at yesterday's hearings on the Federal Tax Liens Act, in response to a question you put to me, may have been somewhat misleading and might be misconstrued. You inquired, in substance, "whether you think section 3505 should be eliminated from the bill." Since, in my testimony, I was reflecting the views not only of

the American Bar Association but also some 16 other organizations, I tried to divide my answer into 2 parts, first, the views of others, second, the views of the American Bar Association.

As to the views of the interested organizations other than the American Bar Association, I stated that I thought that many of the other organizations represented on the task force would be happier about the bill if section 3505 were eliminated. It is this statement which I fear may be misconstrued. I did not mean to imply by that statement that there is any general substantial opposition to the aims and purposes of section 3505 among the members of the task force group. On the contrary, I believe they are disposed to accept the provision, and my unfortunate, ambiguous statement that they would be "happier" to have it eliminated, was intended to reflect simply the obvious fact that, as understandably and typically is the case, any one on whom a new duty or responsibility is imposed, the complete scope of which they are not sure they fully understand, naturally has misgivings, and typically would rather not have any new potential obligation imposed on him.

As I tried to indicate later in response to your inquiry, two objections to section 3505 have been raised by members of the task force. I am not aware of any objection to section 3505(a) by any members of the group other than the American Insurance Association. The objections have centered on section 3505(b). The principal fear was that they might be charged with "notice or knowledge" of a borrower's inability or lack of intention to meet his withholding obligations in circumstances in which it might be quite unreasonable to expect that the person or persons acting for the institution in the transaction would have such notice or knowledge. This very proper concern arises out of the omission from the bill (which we believe all concerned, including the Treasury Department, agree should be rectified) of the current definition of the terms "notice or knowledge" in the Uniform Commercial Code, as amended in 1962. As indicated in the statement of the American Bankers Association, with this change, this objection would be eliminated.

The other fear concerning section 3505(b) is that the provision would apply to ordinary working capital loans and other loans made for general use in the business, rather than for the special purpose of meeting net payrolls. The technical explanation submitted by Treasury states explicitly that the provision "is not intended to apply to ordinary working capital loans by a bank and are not imposed upon lenders as a general obligation of every loan or the obligation of the borrower to pay substantial withholding taxes." In correspondence with members of the task force, representatives of the Treasury Department have assured members of the task force that "the subsection applies only in the case of devices specifically designed to avoid withholding taxes" and "* * * a bank making an ordinary loan of working capital would not be required to inquire into the purposes for which the loan is to be used or the ability of the borrower to meet withholding tax obligations. Even when the loan is specifically to meet payrolls, if it reasonably appears that the funds advanced will be sufficient to meet the gross amount of payrolls the lender would not be responsible if the employer then diverted the funds to some other purpose." Representatives of the banking industry have indicated to me that if such statements are repeated in the committee report, they will be completely content.

As to the position of the American Bar Association, perhaps I should reiterate what I attempted to make clear yesterday: the American Bar Association has directed its special committee on Federal liens to urge the enactment of H.R. 11256, or its equivalent in purpose and effect. It is the view of this committee that with the amendment, and committee report above described, section 3505 is a proper, desirable provision which should be enacted.

If we can be of any service to the committee, or to the staff, in or about your further considerations of this matter, we are at your service.

Respectfully submitted.

LAURENS WILLIAMS,
Chairman, Special Committee on Federal Liens, American Bar Association.

The CHAIRMAN. Mr. Cohen, do you agree that in your opinion it would be better to leave out all reference to section 105?

Mr. COHEN. I think it would be better to take out section 105(a). As far as the other one, subdivision (b) of that, we don't care, really,

because regardless of what that does, the surety companies, although under the decisions, were under no obligations in financing to do anything except on a net payroll basis, the universal rule among the surety claim men is to take that tax bite out right now.

So when this came in, we had no objection because that only confirmed the practice of the surety companies in that regard, although the decisions permitted us to do otherwise. But we didn't think it was fair to finance the contractor without taking care of the tax bite.

As to (a), I think the way it stands now it is rather nebulous because you say that the person who is not the employer shall be responsible, but you don't say anything there as to how it is to be implemented.

For example, in the case that I gave you, what is a surety to do under those circumstances? It may be paying on a particular job 200 men, various amounts of money. Is it to take the tax off and then at the end of the year send them a statement about the withholding?

You might, by that withholding, for example, throw the man way beyond his total tax liability. You are dealing with individual pieces and we don't do that. Our surety companies would have to reconstruct their whole system in paying claims of laborers, not on the gross basis but on a net basis, and then make some arrangements for reporting the tax bite to the Government and to the employee.

That, it seems to me, should be regulated. If 105(a) is to be kept in this bill, it should be regulated in some way as to procedure on the part of the withholding third party.

The CHAIRMAN. Mr. Keogh.

Mr. KEOGH. Mr. Chairman, Mr. Cohen may have, in some measure, covered what I was going to inquire about in his last statement. I am a little confused, however, in the case of a surety company that on default of the contractor goes in and completes the job.

Is it not then an employer and should it not then be subject to the withholding provisions on wages paid during the completion?

Mr. COHEN. Congressman Keogh, we loosely say the surety goes in and completes. There is no legal obligation that the surety go in and complete. It could sit back and say to the owner, "You go ahead and complete and when you have assessed the damages, your loss, you give us your bill and we can pay it."

But many times it is in the interest of the surety company to tender its good offices to say that, "We will arrange for completion." In other words, the surety will go out and get another contractor who sometimes—the new contractor—will enter into a contract with the owner.

In this case it might be the United States. The surety would then pay the difference between what the new contractor is getting and what the contract price was. The surety, itself, is not in the contracting industry. Surety companies don't have staffs of bricklayers, masons, carpenters, and electricians, who can move in and complete a job whenever it defaults. But certainly, when a new contractor comes in, though the surety is paying the tab for that completion, that new contractor is making the deductions. He is an employer. It is rare that the surety as such, in its own name, is doing the completing.

Mr. KEOGH. What you have said is begging the question that I put to you where the surety company does actually go in and does actually complete the job with its own employees.

Mr. Cohen. Sir, you are putting a hypothetical case to me which is not the fact of the way these things operate.

Surety companies don't have any staffs of contractors who go in and complete jobs in the name of the surety. They go out and arrange for somebody to do it.

The surety will pay for it. But the surety company does not become the employer and put a superintendent on the job who is completing the job for the surety company.

Mr. Keogh. In that case, is the surety company affected by the fact as to whether these sections are in or out of the bill?

Mr. Cohen. It is affected, sir. In (a) I posited a case where the contractor has defaulted. He has failed to pay for labor and materialmen, and then the surety has liability under the bonds for the performance of the job, the cost of performing the job, and the payment of labor and material.

Here is a set of unpaid laborers who have not been paid for 2 weeks at most, because they generally quit if they don't get paid on Friday, but let's say it is 2 weeks, $150. He presents his claim to the surety, as do the others. The surety under present practice pays $150 which is the gross wage. It makes no deduction. It then relies upon the employee who receives that payment from the surety for his claim against the employer, his technical employer, depends upon him to take care of that in his return as income.

We would not know how to handle a situation under this 105(a). We would have to work out some procedure. I think a surety would be in a dire position to pay the gross amount under those circumstances. It would have to make a deduction because of the liability which would be imposed upon it by 1(a). But that is a different thing from what it is today.

Mr. Keogh. Thank you.

Mr. Cohen. Thank you.

Mr. Keogh (presiding). Mr. Byrnes.

Mr. Byrnes. On the same subject, you would know what your responsibilities are under 3505(a) if we amended the section to provide that you are an employer for purposes of this act.

You would then know what you are required to do. You would have to withhold and file the relevant reports, transfer the funds, and do anything any other employer has to do under the withholding provisions of the Internal Revenue Code.

But your point here, as I gather it, is that you are not called an employer. I am not suggesting that you want to be called an employer. I know that you do not.

Mr. Cohen. We would not like this paperwork which would be imposed upon us. We are not geared to it.

Mr. Byrnes. But your main point, as I gather it, is that 3505(a) leaves you in an uncertain situation and you are unable to determine whether or not you have the responsibilities of an employer.

Your point is that if we omit this section it will be clear that you are not an employer. There is a question that I think we should resolve. What is the liability of the surety company in terms of paying gross wages or paying net wages less withholding?

Mr. Cohen. At the present time, as I said, if it is a claim which is asserted they pay gross. They make no withholding.

Mr. BYRNES. What if the surety company claims that it is only required under the contract to pay the net wages of these employees. In that case, under this bill, if it passed, who would pay the taxes?

Mr. COHEN. I am not prepared to say that any surety company does that.

Mr. BYRNES. I am going on the assumption that most of them, if not all of them, pay gross wages. But I can see where an argument might be made by some surety company that their liability is limited to paying the net wages that represent the out-of-pocket loss of the employees.

Mr. COHEN. If that is done, I don't know what that particular company would do with that tax money. I assume that they would pay it over. That is just an assumption.

Mr. BYRNES. Wouldn't this be the time to clarify that point? Shouldn't the clarification come now, while we have the matter before us?

Mr. COHEN. I think if 105(a) is to stay in, it should be clarified as to the mechanics.

Mr. BYRNES. But shouldn't that factor be clarified at this point? Maybe what we would do is to say if the gross wage is paid, then the responsibility of the third party is satisfied.

But if the surety withholds or does not pay gross wages then that third party would be responsible.

Mr. COHEN. I would buy that. If they make a withholding, they ought to pay it over. If they pay gross, then they ought to be absolved. I say if a man withholds it for certain purposes, for the purpose of paying taxes to the Government, it ought to be paid to the Government.

Mr. BYRNES. You would go one step further. Even though the surety claims that his liability is limited to paying net wages, he still ought to be responsible for turning over the difference between the net wage and the gross wage that is represented by tax liability.

Mr. COHEN. I say if he withholds it, he ought to be forced to pay it.

Mr. BYRNES. Now you are quibbling with me as to whether he withholds it or not.

Mr. COHEN. I am agreeing with you.

Mr. BYRNES. If he withholds it, you presume he sets it aside. I am talking about the surety party who claims that his liability is limited to paying net wages. He does not withhold or set anything aside.

Mr. COHEN. That ought to be clarified, definitely. In other words, he does it under a claim of right that he does not owe any more.

Mr. BYRNES. That is right.

Mr. COHEN. I agree. I agree and that is one of the difficulties I have with this section. It needs a lot more language in the explaining how this thing works than what appears at the present time.

Mr. BYRNES. This could be clarified by providing that if the surety pays the gross amount due the third person, then there isn't the liability for the tax. But in the event he does not, but pays only the net wages due, then he would be responsible.

Mr. COHEN. If he pays less than gross, he ought to pay for the tax bite.

Mr. BYRNES. Yes, if difference between the payment and the gross represents the withholding part. There could also be some other factor involved. Maybe there are unusual dues.

Mr. COHEN. I said the tax bite.

Mr. BYRNES. What do you do where the contractor has a contract for checkoff of union dues? What does a surety company do in a case like that?

Mr. COHEN. I am not a claimant, sir, and never have been. I came into this field from practicing law and I have never had any claim experience except what I learned over 26 years of dealing with our company people. I don't know what they do. But I suspect that there is no checkoff involved there.

Mr. BYRNES. My only point is I do not think you can use the term "gross" here, but the drafting must relate it to the net plus the withholding tax liability.

There may be some other factors that enter into gross wages that aren't involved in this problem.

Mr. COHEN. I know this as far as union dues and that sort of thing, that regardless of what the law is the unions are well able to take care of their own interests in the matter.

Mr. BYRNES. I do want to join the chairman in commending the chairman of the American bar committee, the membership, and the bar association, itself, for the fine work they have done in bringing this matter to the point where I would certainly hope this committee will be in a position to act.

The CHAIRMAN. We are much closer it it than we were some years ago.

Mr. WILLIAMS. I hope so.

The CHAIRMAN. Thank you again for coming to the committee and discussing this matter with us. This concludes the public hearing in this matter.

(Without objection, the committee will adjourn.

(Whereupon, at 12:03 p.m. the committee adjourned.)

MATERIAL RECEIVED FOR THE RECORD

(The material which follows includes statements which were submitted for the record in lieu of a personal appearance.)

U.S. SAVINGS & LOAN LEAGUE,
Washington, D.C., February 28, 1966.

Hon. WILBUR D. MILLS,
Chairman, Ways and Means Committee,
Washington, D.C.

DEAR MR. CHAIRMAN: In recent years the U.S. Savings & Loan League has been increasingly concerned with the adverse effect on the savings and loan business of various judicial decisions which have intruded upon the traditional priorities of liens on real property in situations where Federal tax liens have arisen.

For several years past we have been working with the American Bar Association and representatives of other adversely affected groups in an effort to clarify or regain some of the rights that have been clouded or lost through these judicial developments. We feel that the enactment of H.R. 11256 will do much to effectively restore these rights and we urge its early consideration, with the omission of those parts of section 105 (a) and (b) which would impose new burdens upon real estate lenders. We seek also to have the bill modified or

clarified to cover certain particulars which were stated and explained in my letter of December 31, 1965, to Dr. Lawrence Woodworth, of your committee staff, a copy of which is enclosed. The specific changes these would entail in the text of the bill have been set forth in the draft attached to this letter.

It would be appreciated if you would make this letter and these enclosures a a part of the legislative record covering the bill numbered above.

Sincerely,

T. BERT KING,
Washington Counsel.

CHANGES IN H.R. 11256 CONSIDERED ESSENTIAL IN ORDER TO AVOID SUBSTANTIAL DETRIMENTS TO THE SAVINGS AND LOAN BUSINESS

(1) Rental income collected by a mortgagee under an assignment clause in the mortgage is an essential part of the security interest, and in the event of a delinquency or default by the primary obligor becomes a major recourse for protecting or recovering part of the investment of the mortgagee. It is believed that such receipts are entitled to the same priority as it accorded to the proceeds of the sale of the underlying real property security. This can be assured by adding on page 7 immediately after line 13 a new paragraph (8) reading:

> "(8) Rentals received pursuant to an assignment of rents under the terms of a security interest which has priority over a notice of lien filed pursuant to subsection (a) of this section".

(2) *Real property taxes*

Possibly (5) on page 8, lines 14 to 16, intended to cover the payment of taxes and assessments, but that at best is unclear. The cardinal importance of this point should not be left to the committee report for clarification. Instead there should be added to page 8 of the bill, after line 16, the following:

"(6) amounts paid to discharge liens described in subsection (d)(6) of this section".

(3) *Escrowed funds*

An express provision should be added to take care of amounts escrowed for disbursement on construction loans, or escrowed for the future payment of taxes, insurance premiums, etc., as they accrue. Moneys held in escrow for disbursements such as are excepted in (f)(2), page 9, and (f)(3), page 10, should also be excepted. To provide for these two situations add after line 16 on page 8—(omitting the "and" at the end of line 13):

> "(7) amounts held by the holder of the security interest to provide funds for the payment of local taxes, assessments or premiums on casualty insurance as they accrue, and
>
> "(8) amounts held for future disbursements to which priority would be extended under (f)(2) or (f)(3)."

(4) *Voluntary advances*

There would seem no legitimate reason why the possibility that a tax lien may be filed at a later date should interfere with the ordinary business of making voluntary advances from time to time, prior to such filing, during the life of a mortgage on real property. Under the law of many States the lien of the mortgage extends to cover such advances in all respects as if they were made on the original date the mortgage was recorded. It would be welcome if this bill would extend this principle to require Federal tax liens to assume the same relative priority with respect to such advances as State law prescribes for other liens recorded subsequently to the mortgage under which the advance is made. If this cannot be conceded, it should at least be clearly evident from the bill that the holder of a security interest should have the priority of his lien extend to all voluntary advances made prior to the filing of the tax lien. This can be made plain by changing "(4)" on line 17 to "(5)" and adding a new "(4)", immediately after line 16 on page 11, reading:

> "(4) VOLUNTARY ADVANCES.—The priority of a security interest which arose prior to the filing pursuant to subsection (a) of notice of the lien imposed by section 6321 shall extend to other advances disbursed by the holder of a secured interest at any time prior to the date of such filing if the priority of the lien of the holder of the security extends to such advance under local law."

(5) It is our understanding that various other groups concerned with the treatment which the bill extends to liens covering loans on real property share our concern over the definition of "actual notice or knowledge" (p. 14, line 23) of the bill. It is noted that their recommendations have been addressed to the attention of the committee. To avoid repetition, it may be simply stated here that it is greatly to be hoped that the final draft of the bill shall be changed to conform more substantially to the Uniform Commercial Code definition of notice, knowledge, etc., by adding, after line 8 on page 15, the last two sentences of section 1–201(27) of that code.

U.S. SAVINGS & LOAN LEAGUE,
Washington, D.C., December 30, 1965.

Mr. LAURENCE N. WOODWORTH,
Chief of Staff, Joint Committee on Internal Revenue Taxation,
Washington, D.C.

DEAR LARRY: In response to your request for advice concerning the position of the U.S. Savings & Loan League with reference to H.R. 11256, I wish to make the following comments.

Basically and simply, we would like to see the law strengthened so that the lien of a mortgage recorded prior to the filing of a Federal tax lien will retain its traditional and essential priority over any later claims against the security for such mortgage. In order to achieve this traditional and essential standing such priority should, as we see it, extend to the recovery of costs and expenses incurred by a mortgagee subsequent to the filing of the mortgage for the maintenance of the security (e.g., necessary repairs) or the enforcement of the lien against the proceeds of the sale of the security (e.g., real estate taxes—foreclosure costs) which by the terms of the mortgage contract or otherwise under local law, if paid by the mortgagee, commonly are recoverable from the security following a default. This includes, in the case of construction loans, advances made subsequent to the date of the filing of a Federal tax lien. It should include all other voluntary advances made pursuant to the terms of the mortgage, when such advances are made prior to the filing of a Federal tax lien or when made subsequent to such filing, in the absence of knowledge. (The 45-day period the bill allows under section 6323(f) in that regard would appear reasonable.)

Various officials of the U.S. Treasury over a long course of discussions have indicated a willingness to accede to clarifications of the law which will supply these assurances to the holders of recorded liens on real property as against Federal tax liens filed later in point of time. That would be most welcome. That would seem, moreover, to do no more than section 6323(a) was intended to do when first enacted, and as to which it was mostly effective before the courts imposed such distinctions as "inchoate" charges, etc., and subordinated such items to Federal tax liens filed after the recording of the real estate lien. However, we are concerned over the feature of the bill which would impose upon real estate lenders some responsibility for the withholding for taxes against the wages of workers employed by contractors or subcontractors engaged in construction upon the security for the mortgage lien. It is our hope that the final version of the bill will clearly relieve mortgagees from any such enlarged responsibilities.

The amendments made to the current omnibus proposal, as introduced by Chairman Mills (H.R. 11256), although it requires some minor revisions in phrasing, gives hope that the long course of discussions over the relative position of mortgage liens and Federal tax liens will be satisfactorily resolved. We heartily hope that proves to be the case. Quite possibly, in the event the bill is brought along to an early hearing date, as we hope it will be, we will want to suggest some minor clarifications through improved phrasing at several points in the bill, or alternatively to support the suggestions of others who may wish to do so. The only specifics I have in mind at present is that we would like to see the definition of notice or knowledge contained in section 6323(i)(2) clearly limited to actual notice or knowledge. By broadening the definition of security or otherwise the priority of assignments of rents derived from security property should be given effect from the date of such assignment as against later filed Federal tax liens.

With best regards,

Sincerely,

T. BERT KING,
Washington Counsel.

NATIONAL LEAGUE OF INSURED SAVINGS ASSOCIATIONS,
Washington, D.C., March 1, 1966.

HON. WILBUR D. MILLS,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The National League of Insured Savings Associations, a nationwide trade association serving the savings and loan industry, supports the Federal Tax Lien Act of 1965 (H.R. 11256) introduced by you on September 24, 1965, with the amendments that delete from the bill the provisions of section 105(a) that would add a new section 3506 to the Internal Revenue Code of 1954 entitled "Liens for Withheld Taxes." It is understood from the committee's February 11 press release that the current hearings are being held on the bill as so amended.

In the interest of coordinating testimony and designating a spokesman as suggested by the committee's press release, the national league has authorized the witness for the American Bar Association in his oral testimony to advise the committee that the national league joins in support of the bill in the form described above.

The national league would appreciate consideration by the committee of the following suggestions for amendments to the bill, which are mainly technical in nature. They have previously been submitted to Dr. Woodworth as chief of staff of the Joint Committee on Internal Revenue Taxation in order that they might be available for consideration.

1. Page 2, line 13: insert "mortgagee, pledgee" before "purchaser." This would clarify the status of a mortgagee or pledgee without requiring them to meet the precise definition of the holder of a security interest. The change would be consistent with the intention shown in page 2, line 7 to include mortgagees and pledgees in the class of those discussed in section 6323(a), Internal Revenue Code of 1954 who are affected by Federal tax liens.

2. Page 6, lines 4 to 18: Proposed section 6323(d)(6) appears to grant priority over a filed Federal tax lien to a holder of a lien on real property (for real property taxes, special assessments, and utility charges) if the lien for local charges is entitled under local law to priority over security interests in the property which are prior in time. While it is permissible to describe the nature of the liens being accorded priority under this provision, it would be helpful to clarify either in the bill or in the committee report the intent to grant real property taxes, special assessments, and appropriate utility or public service charges priority over Federal tax liens whether such taxes and charges themselves become liens against the real property before or after the Federal tax becomes such a lien. Taxes and charges of this nature arise from time to time and are superior to prior real property mortgage liens. It would be helpful to have it made clear that they also take priority over Federal tax liens, which seems to be the general order of the provision.

3. Page 14, lines 2 and 3: Delete "for an adequate and full consideration in money or money's worth". As long as the lien to which the Federal tax lien is being subordinated is valid and not fraudulent, it is questioned whether the consideration given for the lien is pertinent as to this question of priority.

4. Page 14, line 3: Insert "or by operation of law" after "worth" in order to cover the situation where a security interest is acquired other than by contract. This would, for example, cover acquisition by devise or inheritance.

5. Page 28, lines 5 to 13: Delete proposed section 6332(c)(2), which would levy a 50-percent penalty, in addition to personal liability, against a person who fails or refuses to surrender any property subject to levy, upon demand by the Secretary of the Treasury or his delegate. This administrative monetary sanction seems an unduly harsh approach to the problem since the "person" is already made liable in his own person and estate by proposed section 6332(c)(1) (see p. 27, line 15 to p. 28, line 4).

6. Page 29, line 18: Add as section 6334(a)(6) an exemption from levy by the Secretary of the Treasury for that portion of funds in a thrift account pledged by the owner to the institution as security for the outstanding balance of a passbook loan from the institution. An economic feature of passbook loans is that they should be able to be made swiftly, since the borrower looks upon the loan as an alternative to withdrawing his funds from the account evidenced by the passbook. If he cannot get the loan quickly he will most likely withdraw the amount from his savings account at that time, leaving that much less in the account for the Federal lien to operate against. The proposed exemption would help to encourage savings.

It will be appreciated if these comments can be included in the printed record of the hearings.

Sincerely,

WILLIAM F. MCKENNA,
General Counsel.

STATEMENT OF SAMUEL E. NEEL, EXECUTIVE VICE PRESIDENT, MORTGAGE BANKERS ASSOCIATION OF AMERICA, RE TAX LIEN PROVISIONS OF H.R. 11256 AND H.R. 11290

Organized in 1914, the Mortgage Bankers Association of America is the only nationwide organization devoted exclusively to the field of mortgage banking. Its more than 2,000 members cover all areas of the financial community, including mortgage banking firms, commercial banks, mutual savings banks, savings and loan associations, insurance companies, and title companies.

The nucleus of the association's membership is, of course, the 890 mortgage banking firms and their 430 branch offices, which today service more than 4 million mortgage loans amounting to $50 billion—a total of 16 percent of all mortgage debt outstanding. In 1964 alone these companies originated over $9.5 billion in mortgage loans and at that time serviced a little over 52 percent of all FHA-insured mortgages and 45 percent of all outstanding VA-guaranteed mortgages on single-family homes.

As loan correspondents, they serve as a funnel through which investment capital from areas of capital surplus are transferred and used in areas of expanding growth but with less capital availability, originating and servicing mortgage loans on single and multiple-family homes as well as on all types of income property such as shopping centers, commercial buildings, apartments, etc. By providing a nationwide mortgage correspondent system, they contribute extensively to the continuing prosperity and expansion of the building industry, and thus aid in keeping the economy of our Nation vital and aggressive.

We support the enactment of the provisions of these bills, which go far toward effectuating the stated purpose of Congress in enacting Public Law No. 451 of the 62d Congress in 1913, the substance of which is now contained in section 6323(a) of the Internal Revenue Code of 1954. That purpose was made clear by the statement in the report of the House Judiciary Committee (H. Rept. 1018, 62d Cong., 2d sess.) that "There is no reason why the Government should not occupy the same position with reference to liens on property as does the individual."

The members of our association are concerned primarily with the protection of the security given mortgagees under real estate mortgages. There is nothing in the legislative history of existing law to indicate that Congress intended that the priority given the mortgage lien over tax liens would differ in kind or quality from the priority mortgagees historically have enjoyed against other lienors. On the contrary, the committee report cited made it clear that the Government, in this respect, should be placed on the same level as an individual.

Nevertheless, in a series of court decisions in recent years, the courts have denied the priority over after-filed tax liens of security provisions incorporated in the mortgage instrument and valid under State law, such as the following:

(*a*) Obligatory advances under construction mortgages;

(*b*) The mortgagee's expenses of foreclosing, insuring and repairing the mortgaged property;

(*c*) Payment of local real estate taxes on the property in case of the mortgagor's failure to remove the lien of such taxes;

(*d*) Security interests in after-acquired property, whether the interest relates to future advances or is substituted security for a prior debt.

It has long been established practice in the real estate mortgage business to include, as a part of the obligation secured by the mortgage, reimbursement for amounts paid by the mortgagee for the preservation and protection of the mortgaged premises (such as hazard insurance premiums, local real estate taxes and assessments, and necessary repairs), as well as the expenses of foreclosure in the event of default, including attorneys' fees. The recorded mortgage is notice to the world that the property is subject to a mortgage which protects the mortgagee in all of these rights.

To further protect the mortgagee, it has become the custom (particularly with reference to home mortgages) to include in the mortgage instrument a requirement that the mortgagor make monthly deposits in escrow in sufficient amounts to provide, in advance, the funds necessary to meet such charges when they come due. Indeed, in cases where home mortgages are insured by the Federal Housing Administration that agency requires monthly deposits of this kind, which also include payments to meet the mortgage insurance premium. The FHA standard form of mortgage also includes a provision for reimbursement of the mortgagee for costs of proceedings to enforce collection of the debt, including attorneys' fees.

The pending legislation would go far toward effectuating the intention expressed at the time of enactment of the lien statute, so that a tax lien of which the mortgagee had no notice or knowledge when the loan was made, filed after execution and recording of the mortgage and disbursement to the mortgagor, will have no priority over any of the obligations secured by otherwise valid provisions of the mortgage.

We therefore support the enactment of this long-needed revision and clarification of the tax lien provisions of the Internal Revenue Code.

We attach hereto a copy of a memorandum containing suggestions for technical and, we believe, noncontroversial improvement in the provisions of the pending bills, which we have supplied to the committee's chief counsel and to the chief of staff of the Joint Committee on Internal Revenue Taxation, and which we ask be incorporated in the record of these hearings.

Respectfully submitted,

SAMUEL E. NEEL,
Executive Vice President.

SUGGESTED CHANGES SUBMITTED BY THE MORTGAGE BANKERS ASSOCIATION OF AMERICA TO H.R. 11256 (PRIORITY OF FEDERAL TAX LIENS)

1. Section 6323(i)(2) defines "actual notice or knowledge" as meaning that an organization shall be deemed to have such notice or knowledge (*a*) from the time the fact "is brought to the attention of the individual conducting such transaction," and (*b*) "in any event, from the time such fact would have been brought to such individual's attention if the organization had exercised due diligence." This language is apparently taken from the Commercial Code but it omits the further language therein on what constitutes due diligence. It is suggested that the following language from section 1–201(27) of the Commercial Code be added:

"An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information."

2. It is not clear from section 6323(d)(6) that the priority of real property taxes and special assessments over the Federal lien applies regardless of the time of accrual of the State taxes, although we understand that this is intended. It is suggested that, unless this is made crystal clear by the statute the committee report should state that intention.

3. Section 6323(e) of the bill gives priority to the lien of the security interest in the case of the reasonable and necessary costs of (among other things) insuring "the property subject to such lien or insuring such security interest." In the case of the approved FHA mortgage forms, the security of the mortgage extends to the payment of premiums on FHA insurance. It is suggested that the same priority should exist in this case as in the case of insurance of the property itself. If the language of this section remains as in the bill, perhaps the committee report could clarify this.

4. When a mortgagor assigns to the mortgagee rents to be derived from the mortgaged property, as additional security, this should be given effect from the date of such assignment as against later filed Federal tax liens.

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA,
Washington, D.C., February 28, 1966.

Subject: Priority of Federal tax liens H.R. 11256 and H.R. 11290.

Hon. WILBUR D. MILLS,
Chairman, House Committee on Ways and Means,
Room 1102, Longworth House Office Building,
Washington, D.C.

DEAR CONGRESSMAN MILLS: The Associated General Contractors of America is a national trade association with chapters or branches in every State of the Union. Our membership includes more than 7,950 general contractors, whose annual volume of work approximates 80 percent of the contract construction performed in the United States.

We believe that the priority now afforded Federal tax liens over those of contractors, mechanics, laborers, and other private claimants is unfair and should be corrected by Congress. The principal provisions of H.R. 11256 and H.R. 11290 are directed to alleviating this injustice. With the exception of section 105(a) of H.R. 11256 insofar as it would add a new section 3506, "Liens for Withheld Taxes," and with minor suggested amendments to section 105(c) of H.R. 11256 and its counterpart section of H.R. 11290, we strongly favor this legislation.

Our firm opposition to the section 3506 portion of section 105(a) of H.R. 11256, which would extend to third party taxpayers the liability for unpaid withholding taxes on wages in the construction industry, was set forth in our letter of December 15, 1965, to Mr. Laurence N. Woodworth, chief of staff, Joint Committee on Internal Revenue Taxation. Since your committee has agreed that it is unnecessary to receive testimony on this portion of section 105(a) of H.R. 11256 (which has no counterpart in H.R. 11290), we shall not restate our objections to this particular provision. However, our endorsement herein of H.R. 11256 is wholly contingent upon the elimination therefrom of this portion of section 105(a). We think that the risks and burdens which would be imposed on the construction industry by the section 3506 "Liens for Withheld Taxes" would more than offset the benefits from the lien priority relief, although the latter is sorely needed.

Concerning our suggestions for minor amendments to section 105(c) of H.R. 11256, and the counterpart provision of H.R. 11290, we ask that this proposed amendment to the Miller Act, which extends the coverage of performance bonds on Federal public works to liability for unpaid withholding taxes of the contractor, be amplified to afford reasonable safeguards for the surety on the contractor's bond. As requested in the statement made by the American Insurance Association on this proposed legislation, if the bond protection is to be extended to liability for unpaid withholding taxes, it seems only fair that provision be included for prompt notice to the surety and limitation of the time within which suit may be brought against the surety. These steps should aid in the continued availability of Miller Act bonds to contractors.

Subject to the foregoing exception to the section 3506 portion of section 105(a), and minor suggestions on section 105(c), the Associated General Contractors of America supports the proposed legislation as highly desirable in the public interest.

Respectfully submitted.

WILLIAM E. DUNN, *Executive Director.*

STATEMENT OF THOMAS T. SNEDDON, EXECUTIVE VICE PRESIDENT, NATIONAL LUMBER & BUILDING MATERIAL DEALERS ASSOCIATION, ON H.R. 11256 AND H.R. 11290

SUMMARY OF STATEMENT

1. This association supports the provision regarding the definition of a mechnic's lien contained in the amendment to section 6323, and specifically appearing at lines 10–23 on page 13 of H.R. 11256 and the similar language contained in H.R. 11290.

2. The language at lines 21–23, "but in no event before commencement of the actual performance of the service or labor or supplying of material," may create problems in States where a mechanic's lien dates from the contract date or from the date when the entire job was commenced. Consideration should be

given to permitting State law to govern such matters thus creating less confusion among those relying on title search.

3. Although not a subject for this hearing, section 3506 of H.R. 11256 would be vigorously opposed by this association.

My name is Thomas T. Sneddon and I am speaking for the 13,000 members of the National Lumber and Building Material Dealers Association, suite 302, Ring Building, Washington, D.C. The member firms and others like them comprise the $7 billion building materials distribution industry supplying our vast home building, remodeling, and commercial construction industry. Our members account for the largest proportion of the building materials distribution volume in this country.

These member firms have a keen interest in the operation of mechanic's lien laws in the various States. Therefore, either court decisions or legislation affecting such operation is of vital concern to our members in their daily business.

1. The effect of court decisions in whittling down the security afforded by lien laws gravely concerned us. We, therefore, welcome and support the provisions of H.R. 11256 and H.R. 11290, which would provide for proper priority of such materialmen's and mechanic's liens as against section 6321 liens.

It should be noted that material dealers not only supply materials to construction sites, but in certain instances may provide material and labor subcontracting services, or provide partially or wholly fabricated components. Thus, our interest extends in these matters beyond materials liens to mechanic's liens as well. The risks of supplying materials and services to construction projects are compounded by the well-known high incidence of business failures among contractors. The effect of court decisions in this field has been to further jeopardize and make more risky the security afforded by mechanic's liens which may be superseded by section 6321 liens. These factors have created most difficult situations in this industry. The effect of such uncertainty is to inject hardship, unfair, and discriminatory preferences in the business relationships. The public interest would be served by a legislative action to standardize such lien priorities within and according to the laws of each State. Businessmen can be expected to know and to adhere to the laws governing business transaction in their State.

2. We are uncertain and concerned over the language, "but in no event before the commencement of the actual performance of the service or labor or supplying of material," as heretofore noted. The diversity of State laws in respect to dates at which a lien affixed may well create problems with regard to protection of rights through title searches. We are inclined to believe the date of lien validity should be governed by the law of a given State rather than the Federal law.

3. Our summary statement regarding section 3506 of H.R. 11256 is sufficient since by public announcement of the committee, the section is, as we understand it, not to be considered for passage at this time. As noted, we would be opposed to it, as it would unfairly cause a prime contractor (which our members may at times be) to become in effect a surety for the payment of taxes withheld by a subcontractor.

Statement of William A. McKenzie, President, the National Conference of Commissioners on Uniform State Laws, on H.R. 11256

Summary of statement

A change is recommended in section 101 of H.R. 11256 concerning the place for filing liens on the personal property of corporate taxpayers. In the same section a change is recommended concerning the priority of a security interest in fixtures attached to real property.

The interest of the National Conference of Commissioners on Uniform State Laws in H.R. 11256

The National Conference of Commissioners on Uniform State Laws, an organization of State commissioners appointed by the Governors of the several States, is interested in H.R. 11256 for two reasons. The national conference drafted and sponsored the Uniform Commercial Code now adopted by 43 States, the District of Columbia, and the Virgin Islands and we recommend that all laws concerning filing of liens and security interests conform to the terminology and substance of that code to the extent possible. This will ease the burden of persons searching public records for security interests on the assets of particular persons. Our second interest arises from the fact that the conference drafted

in 1926 the Uniform Federal Tax Lien Registration Act which enabled the States to comply with section 6323 of the Internal Revenue Code. We have a special committee drafting a new State law to comply with any amendments of this section which Congress deems advisable. This committee has the following membership:

Herbert H. McAdams, Citizens Bank Building, Jonesboro, Ark., chairman.
Arthur L. Abrams, 17 Academy Street, Newark, N.J.
William P. Cunningham, University of Maryland Law School, Baltimore, Md.
John W. Mooty, 220 Roanoke Building, Minneapolis, Minn.

I am president of the conference. During 1964 and 1965, Prof. Allison Dunham, executive director of the Conference, communicated with Dr. Lawrence M. Woodworth concerning various suggestions for improved language in the bill and I understand that these have been summarized by Dr. Woodworth for your use. I repeat here only the two most important matters from the standpoint of our special interest.

Place for filing tax liens on corporate taxpayers

In section 101 of H.R. 11256 it is proposed that a tax lien on corporations and partnership assets be filed at the residence of the taxpayer which is defined to be at the place "at which the principal executive office of the business is located." We approve of one place of filing for liens on the personal property of multi-location businesses and we approve of allowing the State law to determine what the single filing office should be. This is in accordance with the Uniform Commercial Code. However, the Uniform Commercial Code directs that filing of security interests be in a public office in the State where "the chief place of business" is located.

We recommend that H.R. 11256 be changed in lines 9 through 12 on page 4 to read:

"(A) The residence of a corporation or partnership shall be deemed to be the place at which the *chief place of business* ~~principal executive office~~ of the business is located."

The important reason for this change is that the commercial world will be examining public records under the Uniform Commercial Code. The Congress in enacting the Uniform Commercial Code for the District of Columbia has approved the "chief place of business" for filing of security interests. Unless imperatively necessary, persons familiar with the Uniform Commercial Code should not be asked to examine two record offices which they will be required to do wherever "chief place of business" and "principal executive office" produce different locations.

We urge the committee to adopt and use the terminology now so well established in 43 States and the District of Columbia and the Virgin Islands.

Tax liens and security interests in fixtures

The final recommendation concerns "fixtures," a thorny problem for any draftsman. In subsection (i)(5) of the amended Internal Revenue Code 6623, page 15, lines 18 through 22, there is one reference to "fixtures." We recommend that this be changed as follows:

"(5) FIXTURES.—For purposes of this section, the priority of a security interest with respect to property shall extend to any property *which becomes so attached or related to the property as to become, under local law, a part thereof* ~~any property which is attached to and physically becomes an integral part of the property subject to such security interest~~ *and a perfected security interest in the property attached to or added to other property shall take the same priority over a federal tax lien as it would have taken over a mortgage or security interest in the original property.*"

The national conference has two objections to the present form of subsection (i)(5): It introduces a Federal test for what is a particular kind of property whereas in every other section of H.R. 11256 State law determines what is property and the Federal law prescribes only the priority of the Federal tax lien; it treats with only one-half of the problem.

As we understand the principles of H.R. 11256, one principle is to permit a private security interest perfected prior to the filing of a Federal tax lien to maintain its original priority after a Federal tax lien is filed. A first real estate mortgage continues as a first real estate mortgage. But under local law a first real estate mortgage is given the same priority as to things added to the land where under local law that thing becomes land. The usual statement of the rule is to state that "goods so affixed or related to land as to become a part thereof" are treated as land. The language now found in H.R. 11256 introduces

a different and Federal test. The real estate mortgage is given priority over the Federal tax lien only as to things "attached to and physically" made an integral part of the land. To the extent that physically becoming a part of land is more limiting than "attached and related," a Federal test different from State law is proposed. The underlined language should be substituted for the lined-through language to make the test conform to State law.

But this is only part of the fixture problem and the Uniform Commercial Code treats with the other part in section 9–313. Under the Uniform Commercial Code a security interest which was formerly a conditional sales contract and a security interest which was formerly a chattel mortgage takes priority over real estate mortgages, if the goods subject to this type of security interest become associated with the real estate after the security interest in the goods attaches. Thus the conditional seller of a new furnace or new elevator for an apartment house is given priority over an earlier real estate mortgage. H.R. 11256 is silent as to the priority of the same conditional seller over an earlier Federal tax lien filed in the real estate records. Under the Uniform Commercial Code the conditional seller is also given priority over a later real estate mortgage if the security interest is properly perfected. H.R. 11256 is silent as to whether the conditional seller has priority over a later Federal tax lien. The underlined language in the recommendation above conforms the Federal bill with the Uniform Commercial Code and also, it is believed, with the law as it existed both as to Federal tax liens and real estate mortgages before the Uniform Commercial Code.

We respectfully urge the committee to make the modifications suggested above so as to further uniformity in law.

William A. McKenzie.

National Small Business Association,
Washington, D.C., February 28, 1966.

Hon. Wilbur D. Mills,
Chairman, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C.

Dear Chairman Mills: National Small Business Association supports the principles of H.R. 11256 and H.R. 11290 to amend the Internal Revenue Code of 1954.

Clarification of the law with respect to the relative priority and effect of Federal tax liens over the interest of other creditors is much needed.

NSBA opposes, however, section 105(a) of H.R. 11256 relating to the collection by the United States of withholding taxes.

Inclusion of this statement of NSBA position in the record of hearings on H.R. 11256 and H.R. 11290 will be much appreciated.

Sincerely,

John A. Gosnell, *General Counsel.*

National Association of Real Estate Boards,
Washington, D.C.

Hon. Wilbur D. Mills,
Chairman, Ways and Means Committee,
Longworth House Office Building, Washington, D.C.

Dear Mr. Chairman: The National Association of Real Estate Board joins with the American Bar Association in urging prompt action on H.R. 11256, with the omission of the withholding provisions of section 105(a).

Our association has worked with the Task Force on Federal Liens, and more particularly with the industry groups concerned with the priority rights of mortgagees. In our opinion, H.R. 11256 would alleviate the problem raised by judicial interpretation of the rights of mortgagees as against tax liens which are filed subsequent to the mortgage but prior to foreclosure.

In view of the widespread industry support of this measure and the meticulous study given by these groups and the Treasury Department to this legislation, we hope that the committee will approve it and early action will be taken in the House of Representatives.

It would be appreciated if you would include this letter as a part of the record of the hearings on H.R. 11256.

Sincerely,

Alan L. Emlen,
Chairman, Realtors Washington Committee.

SECTION 7

DIGEST OF STATEMENTS SUBMITTED TO THE COMMITTEE ON WAYS AND MEANS ON THE FEDERAL TAX LIEN ACT (H.R. 11256)

DIGEST OF STATEMENTS SUBMITTED TO THE COMMITTEE ON WAYS AND MEANS ON THE FEDERAL TAX LIEN ACT (H.R. 11256)

PREPARED FOR THE USE

OF THE

COMMITTEE ON WAYS AND MEANS

BY THE STAFF

OF THE

JOINT COMMITTEE ON INTERNAL REVENUE TAXATION

MARCH 2, 1966

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1966

DIGEST OF STATEMENTS SUBMITTED TO THE COMMITTEE ON WAYS AND MEANS ON THE FEDERAL TAX LIEN ACT (H.R. 11256)

I. General Comments

American Bankers Association

The association favors the bill.

American Land Title Association

The association favors the bill.

The Associated General Contractors of America

The association favors the lien priority provisions of the bill.

Mortgage Bankers Association of America

The association supports in principle the provisions of the bill relating to the relative priority of tax liens over the interests of mortgagees.

National Association of Mutual Savings Banks

The association endorses the enactment of the bill.

National Electrical Contractors Association

The association supports the proposal except for the provision relating to liens for unpaid withheld taxes (sec. 3506, p. 34*).

Pittsburgh National Bank

Without exception the Pennsylvania lawyers that the bank has contacted feel the bill is a working measure, which, if not a perfect solution to all the problems, goes a long way toward solving many of the most troublesome ones. They would, therefore, very much like to have the bill, in a form closely similar to the one now being considered, enacted into law as soon as possible.

II. Comments on the Provision Relating to the Validity and Priority of Federal Tax Liens Against Certain Persons, etc. (Sec. 6323, etc. P. 2)

American Bankers Association

The provision which provides that a tax lien shall not be valid with respect to the holder of a security interest under prescribed conditions (sec. 6323, p. 2), may present a question as to the status of a present assignment, as security for a present loan, of rights to payments or performance to become due in the future under an existing contract. An example is a loan to a motion picture producer secured by an assignment of the future proceeds of an existing distribution contract. If the rights under the contract should be deemed after-acquired

*Page references are to bill.

1

property of the borrower, coming into existence only when earned by performance of the borrower's obligation under the contract, an intervening filed tax lien against the borrower might take priority over the security interest previously created and perfected. The statute should be clarified to foreclose this result.

American Land Title Association

The provision relating to the invalidity of tax liens without filing of notice provides for filing by the Government with the clerk of the district court in certain situations (sec. 6323(a), p. 2). This creates a problem for title insurance companies.

National League of Insured Savings Association

The provision relating to the invalidity of tax liens against certain persons should be amended by inserting the words "mortgagee, pledgee" before the word "purchaser" (sec. 6323(a), p. 2). This would clarify the status of a mortgagee or pledgee without requiring them to meet the precise definition of a holder of a security interest. The change would be consistent with the intention shown in the title of the paragraph.

National Conference of Commissioners on Uniform State Laws

The Commissioners suggest the phrase "as designated by the laws of such State" appearing in the provisions relating to the places of filing notice of tax liens be changed to read "as that office is designated by the laws of such State". (See sec. 6323(a)(1) (A) and (B), p. 2.) The reason for the suggestion is that the phrase in the bill makes it unclear whether the State can designate the office in which filing must occur or whether the State can designate the situs of the property. Presumably, Federal law will determine the latter.

Section 6323 is not clear on where liens must be filed. Until the Uniform Commercial Code, the tradition of filing was to file with respect to location. For this reason people may construe the bill as adopting that approach. Presumably, however, property shall be deemed to be located at the residence of the taxpayer. For this reason the Commissioners suggest amending the provision designating the situs of personal property for the purpose of filing a notice of tax lien by inserting the following at the end: "whether or not the physical location of the property is in the same State as the residence of the taxpayer." (See sec. 6323(c)(1)(B), p. 4.)

The Uniform Commercial Code designates as the residence of a corporation its chief place of business. This is a familiar term to the commercial world. For this reason the provision designating the residence of a corporation for the purpose of filing a notice of tax lien against its personal property should be amended by deleting the reference to the principal executive office of the business and inserting in lieu thereof the chief place of business (sec. 6323(c)(2)(A), p. 4).

Most States consider fixtures as "goods so affixed or related to land as to be a part thereof." The provision which defines fixtures for the purpose of determining the priority of a security interest with respect to property, however, considers fixtures as "property which is added to and physically becomes an integrated part of the property subject to such security interest" (sec. 6323(i)(5), p. 5). The Commissioners suggest that the language of the bill be amended to adopt the language of State law to avoid confusion.

The bill does not clearly treat the problem of property already subject to a security interest becoming attached to real estate against which there is a properly filed Federal tax lien. The Commissioners believe that in this respect the Uniform Commercial Code clarifies the prior law as to conditional sales contracts so that if properly filed a tax lien on real estate is junior to the claim of a seller under a title of retention contract. The Commissioners believe that this rule should continue and that the seller of new goods attached to real estate of the taxpayer should have priority. It therefore suggests that the definition of fixtures (sec. 6323(i)(5), p. 15) should be amended by adding at the end thereof the following: "and with respect to property added to property subject to a Federal tax lien, a security interest in the additional property which attached before it was added to the property shall take the same priority over the Federal tax lien as it would have taken over a mortgage or security interest in the original property."

National Association of Mutual Savings Banks

The committee reports or the bill should clarify the status of a passbook loan. This may be covered in the provision relating to the priority of the holder of a security interest in certain securities (sec. 6323(d)(1), p. 4). If it does not, however, rules similar to those provided in the provision relating to the priority of an insurance company in certain insurance contracts (sec. 6323(d)(7), p. 6) should be incorporated in the bill.

Pittsburgh National Bank

The bank believes that a bank should have the right to set off against the balance in a depositor's account an indebtedness to the bank. In this respect the bank thinks that a bank deposit should receive the same statutory consideration that stocks and bonds receive in the provision relating to the priority of the holder of a security interest in securities (sec. 6323(d)(1), p. 4).

American Bankers Association

The bill does not recognize the right of setoff of a person obligated to a taxpayer. This is contrary to general principals of law and it is strongly urged that a provision covering this matter be added to the present bill.

Frank R. Kennedy

Mr. Kennedy suggests that it is regrettable that the protection accorded those who acquire interests in motor vehicles without actual notice or knowledge of a Federal tax lien is limited to purchasers of such vehicles (see, sec. 6323(d)(2), p. 5).

National League of Insured Savings Association

The provision relating to the invalidity of tax lien in certain cases even though notice has been filed appears to make a tax lien subordinate to real estate taxes and special assessments which under local law are entitled to priority over security interests in such property that are prior in time (sec. 6323(d)(6), p. 4). Either the bill or the committee reports should make clear that the intent is to grant real property taxes and special assessment, etc., priority over a tax lien whether they become liens against the real property before or after the Federal taxes become a lien.

Mortgage Bankers Association of America

The provision relating to the priority of real property taxes, etc., does not make clear that the priority of real property taxes and special assessments over a Federal lien applies regardless of the time of accrual of the State taxes (see, sec. 6323(d)(6), p. 6). The committee reports should make this clear if the statute does not.

National Association of Mutual Savings Banks

The committee reports on the provision relating to the priority of real property taxes, etc., should make clear that priority accorded applies to real estate taxes and special assessments whether they become liens before or after a tax lien is filed (see, sec. 6323(d)(6), p. 6).

The priority extended to liens of insurance companies who make loans on the strength of the value of insurance policies (see, sec. 6323 (d)(7), p. 6), should extend to other lenders who make loans secured by an insurance contract prior to the time the insurer under the contract obtains actual notice or knowledge of a tax lien.

American Bankers Association

The provision relating to the priority of interest and expenses attributable to liens having priority over tax liens (see, sec. 6323(e), p. 7) is not clear on whether it would cover a payment of ground rent by a leasehold mortgagee in order to preserve the leasehold which is the security. The congressional committee reports should clarify this point.

Mortgage Bankers Association of America

The provision relating to the priority of the reasonable and necessary costs of (among other things) isnuring property subject to a lien or insuring a security interest having priority over a tax lien, should apply in case of the payment of premiums on FHA insurance (see, sec. 6323(e) (7), p. 7). Either the bill or the committee reports should make this clear.

The same provision also should provide that where a mortgagor assigns to a mortgagee as additional security rents to be derived from mortgaged property, it should be given effect from the date of the assignment as against later filed tax liens.

National Commercial Finance Conference, Inc.

The association recommends extending the provision relating to the priority of interest and expenses attributable to lien having priority over tax liens (see, sec. 3623(e)(1), p. 8) so that it applies to finance charges. The amendment would apply in the case of a secured transaction, such as consumer installment sales, where there is no interest charge as such.

U.S. Savings & Loan League

The league recommends that the priority of a secured interest should extend to the recovery of costs and expenses incurred by a mortgagee subsequent to the filing of the mortgage (1) for the maintenance of the security (e.g. necessary repairs) and (2) for the enforcement of the lien against the proceeds of the sale of the security (e.g. real estate taxes—foreclosure costs), which, by the terms of the mortgage contract or otherwise, under local law is paid by the mortgagee and commonly recoverable from the security following a default. This includes, in the case of construction loans, advances made subsequent to the date

of the filing of notice of a tax lien. It should include all other voluntary advances pursuant to the terms of the mortgage when such advances are made prior to the filing of notice of a tax lien or made subsequent to such filing in the absence of knowledge. (The 45-day period the bill allows under sec. 6323(f), p. 8, would appear reasonable.)

National Commercial Finance Conference, Inc.

The conference suggests amending the provision relating to the date of the priority of advances made subsequent to the filing of notice of a tax lien (sec. 6323(f)(1), p. 8) because the first clause of that section is ambiguous. The association recommends inserting in lieu of the clause "Except for purposes of this subsection and subsection (g)," the clause, "Except as otherwise provided for in the specific situations covered by subsection (f)(2) or (f)(3) or (g)."

The conference also suggests adding the word "such" before the word "holder" in the first line on page 9 in the same section (6323 (f)(1)). The association believes that this word was omitted inadvertently.

Frank R. Kennedy

Mr. Kennedy believes that purchase money security interests and liens will no longer be accorded any special standing in competition with the Federal tax lien under the bill (see sec. 6323(f), p. 8). Accordingly, he thinks the statute will greatly discourage sales which are now made pursuant to secured credit arrangements.

American Bankers Association

Some of the language in the provision relating to the priority of a lien for advances pursuant to a security interest which arose prior to the filing of notice of a tax lien (see, sec. 6323(f)(2)(6), p. 9) might be taken to cast doubt on the general priority of purchase money mortgages or other purchase money security interests arising after the filing of notice of a tax lien. No such inference is intended and this should be made clear.

American Land Title Association

The provision relating to priorities under certain written financing agreements provides that a lender's, etc., priority under a financing agreement shall extend to property acquired prior to 45 days after the filing of notice of a tax lien (see, sec. 6323(g), p. 11). There is no such priority under present law, but as a matter of practice the Internal Revenue Service has not pressed the point as to the disbursements under a conventional mortgage loan. The new provision may encourage the Government to claim priority over disbursements made after the 45-day period. This would require a new tax lien search every 45 days.

National Commercial Finance Conference, Inc.

The conference suggests the provision relatlng to the priority under certain written financing agreements (see, sec. 6323(g), p. 11) be amended so that the section applies to financing agreements providing for loans on the security of inventory, as well as loans on the security of contracts rights, chattel paper, etc. The reason for the amendment is that inventory is one of the most important types of collateral generally covered by the financing agreements referred to in the section.

The association also suggests eliminating the reference to a purchaser in section 6323(g). The reason for this is that the section is not concerned with the conventional vendor-purchaser transactions, but is concerned with security interests. Purchasers do not hold security interest, as recognized in the provision defining a purchaser (see sec. 6323(h)(2), p. 12).

United States Savings & Loan League

The league would like assignment of rents derived from security property to be given priority from the date of such assignment as against later filed tax liens.

National Commercial Finance Conference, Inc.

The association suggests amending the definition of purchaser (see, sec. 6323(h)(2), p. 12) (for the purposes of the provision relating to the validity and priority of tax lien against certain persons by deleting the introductory phrase "Except as otherwise provided in this section,". The reason for the amendment is because the phrase is not clear as there is no other definition of purchaser in section 6323.

American Insurance Association

The provision which defines the term "mechanics lienor" (see sec. 6323(h)(3), p. 13) (for the purposes of the provision relating to the validity and priority of tax lien) should include those who furnish labor and material on public works contracts.

National Lumber & Building Material Dealers Association

The association approves of the definition of mechanic's lienor (see sec. 6323(h)(3), p. 13) (for purposes of the provision relating to the validity and priority of tax lien) but has a reservation about the words, "but in no event before the commencement of the actual performance of the service or labor or supplying of material." The association believes the phrase may create confusion and conflicting decisions. It suggests that the deletion of the quoted words would serve to leave to local law the time for validity of the lien.

The Pennsylvania Bar Association

The association suggests amending the definition of mechanic's lienor (see sec. 6323(h)(3), p. 12) (for purposes of the provision relating to the validity and priority of tax lien) in order to resolve the circular priority problem which the present definition would create. In Pennsylvania, a mechanic's lien takes priority from the date of commencement of improvement rather than from the date when the particular lienor commences his services or supplies his material. A circular priority problem thus would arise when the following sequence of events occurs: (1) construction is commenced; (2) mortgage is recorded; (3) notice of tax lien is filed; (4) laborer commences his performance of work. Under section 6323, the Federal tax lien would be junior to the mortgage lien but senior to the mechanic lien, which latter would be snior to the mortgage lien.

American Insurance Association

The provision which defines the term "security interest" (see sec. 6323(h)(4), p. 13) (for the purposes of the provision relating to the validity and priority of tax lien) is not clear as to whether or not a security interest includes an interest in property acquired by a surety

by subrogation. The definition should be amended to make certain that it includes such an interest.

National League of Insured Savings Association

The association suggests deleting the phrase "for an adequate and full consideration in money or money's worth" from the definition of the term "security interest" (see sec. 6323(h)(4), p. 13) (for purposes of the provision relating to the validity and priority of tax lien). As long as the lien to which the Federal tax lien is being subordinated is valid and not fraudulent, it is questionable whether the consideration given for the lien is pertinent on the question of priority.

The association suggests further amending the definition of security interest by adding after the word "contract" the phrase "or by operation of law" to cover the situation where a security interest is acquired other than by contract, such as in the case of devise or inheritance.

National Commercial Finance Conference, Inc.

The provision relating to the time a security interest is deemed to arise (see sec. 6323(4)(B), p. 14) (for purpose of the provision relating to the validity and priority of tax lien) should be amended by deleting the phrase "upon such property." The reason for this amendment is that the phrase is unnecessary and its deletion will conform the language in the subsection to the parellel provision of section 6323(g).

American Bankers Association

The definition of "actual notice or knowledge" (see sec. 6323(i)(2), p. 14) (for purposes of the provision relating to the validity and priority of tax liens) incorporates the first part of the Uniform Commercial Code definition, but omits the last part of that definition. The omission leaves the possible implication that every organization is required, for its own protection, to establish procedures, however costly, whereby knowledge in one part of the organization would always find its way to another part of the organization. It is recommended that the subsection be changed to conform substantially to the Uniform Commercial Code definition.

Mortgage Bankers Association of America

The definition of "actual notice or knowledge" (see sec. 2328(i)(2), p. 14) (for purposes of the provision relating to the validity and priority of tax liens) is apparently taken from the Uniform Commercial Code, but omits the language contained in the code as to what constitutes "due diligence." The definition of due diligence as contained in the Commercial Code should be added.

National Association of Mutual Savings Banks

The definition of "actual notice or knowledge" (see sec. 6328(1)(2), p. 14) (for purposes of the provision relating to the validity and priority of tax liens) is largely patterned after the definition in the Uniform Commercial Code. The code, however, contains a definition of reasonable due diligence which is not included in the bill. This definition should appear either in the bill or the committee reports on the bill.

United States Savings & Loan League

The league would like to see the definition of "notice or knowledge" (see sec. 6323(i)(2), p. 14) (for purposes of the provision relating to

the validity and priority of tax liens) be limited to actual notice or knowledge.

III. Comments on the Provision Relating to a Special Procedure for Levying on Property To Collect Tax, etc. (Sec. 6332(b), p. 26, etc.)

William T. Plumb, Jr.

The provision relating to the invalidity of tax liens without filing of notice (sec. 6323(a), p. 2) may be ambiguous. One provision seems to contemplate that a State may designate one office for filing tax liens against real property and one office for filing such liens against personal property (see sec. 6323(a)(1), p. 2); however, another provision could be read as requiring that the same office be designated in both instances (see sec. 6323(a)(2), p. 3). The committee reports should make it clear that this is not the case.

The Uniformed Commercial Code designates as the residence of a corporation its chief place of business. The bill should adopt the same definition for the purpose of uniformity. The present provision defines as the residence of a corporation its principal executive office (sec. 6323(c)(2)(A), p. 4). It should be noted that the bill is silent concerning the place of residence of a trust or an estate.

The provision relating to the invalidity of a tax lien (even though notice has been filed) with respect to tangible personal property purchased at retail (see sec. 6323(d)(3), p. 5) should not be confined to the retail level. Wholesale purchasers would remain subject to at least a theoretical risk of tax liens and there seems little reason from the revenue standpoint to restrict the statutory protection to the retail level. The same provision also should be amended by adding at the end the following clause: "unless at the time of the purchase the purchaser intends or knows that the purchase is intended to hinder, evade or defeat the collection of any tax." This clause now appears in the provision relating to the priority of real property taxes, etc. (sec. 6323(d)(6), p. 6), but it should appear closer to the rule it qualifies.

The provision relating to the invalidity of a tax lien (even though notice has been filed) with respect to an attorney's lien (see sec. 6323(d)(5), p. 5) should be amended by inserting the words "or by valid contract" after the words "under local law". The reason for the amendment is that in some jurisdictions there is no common law or statutory attorney's lien automatically attaching to a cause of action, but an equitable lien will be recognized if provided for by contract. The same provision should be further amended by adding a clause at the end which makes clear that the lien will not be recognized if the attorney knows that it is intended to hinder, evade, or defeat the collection of any tax. In addition, the provisions should be further amended by inserting the following language after "cause of action" (appearing on line 24 on p. 5), "(except any part thereof which the Secretary or his delegate credits against any liability of the taxpayer under section 6402 (relating to authority to make credits or refunds))."

The provision relating to the validity and priority of a tax lien (even though notice has been filed) with respect to designated person

or property (sec. 6323(d) p. 4) should be amended by providing for the priority of a hospital lien over a tax lien.

One provision of the bill may be construed as removing the protection which purchase money interests now enjoy with respect to property acquired by a taxpayer after notice of a tax lien is filed. The specific reference in the provision granting certain priorities to a security interest arising before the filing of the tax lien (see sec. 6323(f)(3), p. 10) may cast doubt on the priority of a subsequent (purchase-money) mortgage (or of a purchase-money security interest in personalty arising before or after, since only realty interests are protected by (f)(3)).

The bill contains no provision giving a bank the right to set off against the balance in a depositor's account an indebtedness to the bank. The principle is the same as that applicable to policy loans by life insurance companies, where the right of setoff in effect is granted (see, sec. 6323(d)(7), p. 6).

The provision extending the priority of a security interest to property acquired within 45 days after filing of notice of a Federal tax lien (see, sec. 6323(f)(1), p. 8) is clear, but does not answer the question as to property acquired after the 45-day period. Thus, uncertainties will exist with respect to security interests in a changing mass of property (inventories, accounts receivable, etc.) where the arrangement does not involve future advances (except within the 45-day period). It is recommended a provision be adopted permitting substitution of property to the extent necessary to maintain the value of a security unimpaired.

The provision extending the priority of the lien of a holder of a security interest to after-acquired property (sec. 6323(f)(2)(A), p. 8) will have a serious adverse affect on security assignments of future rents, etc.

The reason for the phrase "except as otherwise provided in this section," in the provision defining purchaser (see, sec. 6323(h)(2), p. 12) (for the purpose of the provision relating to the validity and priority of tax liens against certain persons) is because the section not only defines "purchaser," but it also specifies that a purchaser's interest, to be protected, must be valid under local law against subsequent purchasers without actual notice. (See, Comment of National Commercial Finance Conference, Inc., with respect to this.) This is in contrast to the provision establishing the priority of an interest under certain financing agreements (see, sec. 6323(g), p. 11) where it is provided that a purchaser of particular kinds of property is protected if he has protected his interest against a subsequent lien obtainable by legal or equitable proceedings on a simple contract. The exception in section 6323(h)(2) refers to this provision. (Perhaps the same effect could be achieved by striking the exception where it appears at the beginning of the section and inserting it after the words "provided that".) (The reference in sec. 6323(i)(2) to sec. 3506 in the bill is not appropriate, since this phrase does not appear in sec. 3506.)

The bill does not recognize the right of setoff. Mr. Plumb believes that it should, even if it does so only in limited circumstances.

The definition of actual notice or knowledge (see sec. 6328(i)(2), p. 14) is derived from the definition in the Uniform Commercial Code; however, it lacks the suplemental language contained in the code which

explains what constitutes due diligence. This language should be added to the provision.

American Life Convention & Life Insurance Association of America

This provision provides a levy procedure under which the Government may, after proper notice, reach the loan value of a life insurance policy subject to a tax lien (see sec. 6332(b), p. 26). The provision applies only to contracts having a loan value, and does not apply to policies providing extended term insurance, which may have a substantial cash value but no loan value. The simplified procedure for reaching the value of an insurance contract should be available for the cash value of extended term coverage in the same manner as it is available for the loan value of other policies.

The levy procedure of the provision is not in lieu of, but is in addition to, the right of the Government to reach life insurance values by foreclosure procedures. Either the bill or the committee reports should make clear that the levy provisions contemplate that procedures will be adopted to encourage the continuation of policies for the benefit of the beneficiaries where it appears that the rights of the Government will not suffer. Thus, they should recognize that after satisfaction of the levy, a policy should be transferable, free of the tax lien, to the beneficiary or some other person with an interest in the life of the insured. Moreover, they should make clear that policies so transferred are not considered to be transferred for value (so that the proceeds on death would be excluded from income under section 101(a)(2)).

In addition, this provision provides that an insurance company is required to pay the amount demanded under a levy without further notice at the end of 90 days. A second notice by the Government should be given to the company at the end of the 90-day period before payment is due. This second notice would eliminate much of the administrative and paperwork now associated with Federal tax liens. Furthermore, it would give the Government the opportunity of establishing a valuable system for marshaling assets.

The bill should make clear that the legal result of an insurance company's compliance with a notice of levy is the same as if it made payment pursuant to action of the policyholder (see sec. 6332(d), p. 28). In addition, it should provide that a company which fails or refuses to surrender property subject to levy shall be liable in his own person for the loan value (as contrasted to the "value" of the property as provided in sec. 6332(c), p. 27). This may be done by a statement in the committee report.

Frank R. Kennedy

Mr. Kennedy believes the special rule for levying on life insurance and endowment contracts to collect tax (see, sec. 6332(b), p. 25) is well considered, accommodating the Government's need for expeditious levy on the cash surrender or loan value without jeopardizing the insurance protection provided by the policy.

William T. Plumb, Jr.

The provision providing for a levy on property in order to satisfy a tax lien (sec. 6331(b), p. 25) makes it clear that the levy extends only to property possessed and obligations existing at the time of the levy. This does not resolve the question threatening common law

tort liability for property of the debtor received after satisfaction of the levy based, not on the levy, but on the knowledge of the lien which the levy might impart. The committee reports should take a position on this question of nonstatutory liability.

L. Hart Wright, professor of law, University of Michigan

Mr. Wright is in general agreement with the provision which provides a levy procedure under which the Government may, after proper notice, reach the loan value of a life insurance policy subject to a tax lien. (See sec. 6332(b), p. 26.)

American Bar Association (John A. Gilmore)

The provision relating to enforcing tax liens on insurance policies (see, sec. 6332(b)(3), p. 27) in effect preserves a Government lien on a life insurance policy after the Government has levied on the policy. It is recommended that the bill provide a means by which a taxpayer has the opportunity to divest himself of an insurance policy in a manner which would discharge the policy from the lien.

American Bar Association (Philip L. Mann).

The provision relating to a 50-percent penalty for failing to surrender property pursuant to levy of a tax lein (see, sec. 6332(c)(2), p. 27) seems unnecessary. It may well force third parties who have claims against the property to more frequently (and at added cost) institute actions in order to protect their rights which the Commissioner in his zeal may be suspicious of.

National League of Insured Savings Association

The association suggests deleting the provision which provides a 50-percent penalty for those who fail or refuse to surrender property subject to levy upon demand by the Secretary of the Treasury (see, sec. 6332(c)(2), p. 27). This administrative monetary sanction seems an unduly harsh approach to the problem since the person is already made liable in his person and estate (under section 6332(c)(1), p. 27).

National League of Insured Savings Association

The association suggests adding a new section 6334(a)(6) to provide an exemption from levy for that portion of funds in a thrift account standing as security for a loan by the institution. An economic feature of these passbook loans is that they should be able to be made swiftly, since the borrower looks upon the loan as an alternative to withdrawing his funds from the account evidenced by the passbook. If the borrower cannot get the loan quickly, he will most likely withdraw the amount from his savings account at that time, leaving that much less in the account for the Federal lien to operate against.

IV. Comments on the Provision Relating to the Liability For Withheld Taxes of Third Parties Who Pay or Provide For Wages (Sec. 3505, p. 33)

Frank R. Kennedy

Mr. Kennedy believes that it is basically sound to treat the United States as essentially a subrogee to the rights of wage claimants with respect to the withholding taxes which should be remitted by the employer (see, sec. 3505, p. 33). He is not clear, however, that the proposed provision is intended to deal with the right of the Government to require the trustee in bankruptcy to pay withholding

taxes on claims for wages earned but not paid before bankruptcy. He suggests that if it is, a question arises as to whether the United States must file a claim within time permitted by section 57n of the Bankruptcy Act in order to receive the withholding taxes.

American Bankers Association

The intent of the provision relating to the personal liability for withholding taxes of third parties who pay or provide funds for wages of an employer (sec. 3505(b), p. 34) is to reach situations in which a third party supplies funds specifically for the payment of wages of a contractor's employees. "The subsection should be clarified to make the intended scope clear and to eliminate the risk that a bank making loans for general working capital needs might be liable for such taxes."

National Association of Mutual Savings Banks

The association has no objection to the provisions relating to the personal liability for withholding taxes of third parties who pay or provide funds for wages of an employer (sec. 3505(b), p. 34) if the meaning of the phrase "actual notice or knowledge" is modified by adopting the language used in the uniform commercial code to define "due diligence" (see sec. 6323(i)(2), p. 14). In such case, however, the committee reports should make it clear what standard of banking practice is considered to constitute the exercise of the required due diligence. In those cases where a bank acts as agent, due diligence should only require that the bank use the prudence of a fiduciary in selecting, and doing business, through such agent, and it should not be put in the position of jeopardizing the funds of its depositors because of a failure of the agent of which the bank had no actual notice or knowledge.

William T. Plumb, Jr.

The provision relating to the liability of third parties for withholding taxes of employer (sec. 3505(b), p. 34), should contain a reference to the definition of actual notice and knowledge in section 3505.

The last sentence of this provision does not make clear that the third party's liability is limited to 20 percent of the amount he supplied to the employer with actual notice or knowledge that the withheld taxes would not be paid. It should be clarified.

The committee reports should make clear that this section is intended to apply only in the case of devices designed to avoid tax and not in the case of a loan of working capital to a businessman by a bank.

National Commercial Finance Conference, Inc.

The association and its members are deeply concerned with the provision relating to the personal liability for withholding taxes of third parties who pay or provide funds for wages of an employer (see sec. 3505(b), p. 34).

V. Comments on the Provision Relating to a Lien for Withheld Taxes Being of the Same Priority as Lien for Wages (Sec. 3506, p. 34)

American Insurance Association

The provision which provides that the United States shall have the same rights with respect to liens for withholding taxes that employees have with respect to liens for wages (sec. 3506, p. 34) is entirely unacceptable. The approach of the section is unworkable. It would

revolutionize present payment practices of the contracting business. Its fairness as applied to persons not presently liable for withholding taxes is subject to question. The provision is subject at least to the following objections:

(1) The underlying theory of the proposal is inconsistent with the statutes as they have existed since the time withholding for taxes began. An employer owes taxes withheld to the Government, not to the employees, who have no claim whatsoever against him for amounts withheld. Thus, treating the Government as merely stepping into the shoes of the employer completely reverses the basic scheme of the present statute.

(2) The "mechanic's lien" theory as the background for the provision has no basis in any mechanic's lien legislation in any State. Mechanic's lien legislation is one of the earliest forms of social legislation designed to protect laborers and materialmen who without such a right would be left without remedy in any practical sense. This is in sharp contrast to the various remedies open to the tax collection authorities.

(3) The reach of the provision is unclear. What is the construction, etc., contract to which the provision refers: the one between the owner and prime contractor; the prime contractor and his subcontractors; between subcontractors, et cetera. Moreover, against what property is the Government's right to run: the owner's land; moneys due only from the owner to his direct contractor; or any of the owner's property. And is it for the tax dereliction of any employer in any of the contractual tiers.

(4) The provision creates a problem of how an owner can protect himself against the Government's right.

(5) The provision clearly implies that more than mechanics lien rights are involved.

The Associated General Contractors of America

The association objects to the "novel and unprecedented tax concept that the Federal Government be granted a broad claim for unpaid withholding taxes on construction projects * * *." (See sec. 3506, p. 34.)

"[I]t is unrealistic to believe that property owners and contractors could reasonably protect themselves from liability under section 3506 to the Federal Government by following the same procedures they now use with respect to workmen's liens. Workmen are present at the job, and generally are paid at the end of each week for their services * * *. [I]n contrast, the Internal Revenue Service is not represented at construction projects, and withholding tax returns are not submitted to the Government on a weekly basis. * * * [A]pparently 10 months could elapse between performance of some weekly employment services and filing at Federal Government of a notice of lien for unpaid withholding taxes thereon."

National Association of Home Builders

The provisions of the bill which place a homebuilder in a position where he is responsible for withholding taxes of his subcontractors are totally unacceptable and will cause great disruption in the homebuilding industry. (See sec. 3506, p. 34.) As a matter of general tax policy, a single industry, the construction industry, should not be especially designated for the unique tax treatment (liability by one

party for the withholding taxes of another). If such a device is to be employed it should be applied accross the board to all taxpayers similarly situated. Moreover, if the problem of tax collection, as the Treasury's statistics suggest, exists, the problem should be dealt with directly by more vigorous collection procedures, rather than indirectly through burdensome withholding procedures.

National Association of Mutual Savings Banks

The provision which gives the Government the right to file a statutory lien which will enjoy a priority equal to a mechanics lien filed by an employee (see sec. 3506, p. 34) will add substantially to the burden of lenders in jurisdictions which accord this lien priority over a prior filed security interest. However, the association feels that there is an overriding concern that an acceptable solution to the problem of the priority of Federal tax liens be enacted. The association, however, has certain reservations regarding the broad scope of section 3506. These reservations are as follows:

1. Concern that the provisions regarding the time in which the Government is permitted to perfect its lien (30 days after the withholding tax return is required to be filed (see sec. 3506(b)(3), p. 36)) places an undue burden on lenders.

2. Whether this section should apply if the person who fails to deduct and withhold from wages did so on the basis of a reasonable doubt as to whether the law required collection of tax or if that person was the one required by law to collect the tax.

National Association of Real Estate Boards

The association questions the fairness of the provision which gives the Government the same rights with respect to liens for withholding taxes that employees have with respect to liens for wages (see, sec. 3506, p. 34) insofar as it subjects a property owner to a possible double payment of the withheld portion of wages even though he himself has met his obligations under the contract. Even though the owner might exercise some control over the contractor's actions by the threat of holding back final payment until proof of withheld wages is furnished, the owner is still placed in the position of supervising or overseeing contractor's affairs to that extent.

The exemption of owners of a single family dwelling (in section 3506(a), p. 35) should be expanded to exempt the owners of one-to-four-family homes, or at least the owners of two-family dwellings if one of the dwellings is occupied by the owner.

National Association of Plumbing, Heating, Cooling Contractors

The association strongly objects to the provision which gives the Government the same rights with respect to liens for withholding taxes that employees have with respect to liens for wages (see, sec. 3506, p. 34).

National Electrical Contractors Association

The provision which gives the Government the same rights with respect to liens for withholding taxes that employees have with respect to liens for wages (see, sec. 3506, p. 34) will add another hazard to the electrical contracting industry which now bears the burden of excessive risks. The Treasury Department should take steps to collect from contractors who do not remit withheld taxes earnings by means other than injecting itself as a mechanic's lienor who claims an interest in

property. The contractor or subcontractor who does not remit withheld wages as required should be penalized and punished. The association strongly feels, however, that a contractor or subcontractor who obeys the law should not have his interest in a property diluted because another did not remit withheld taxes. Moreover, an owner should not have his property subjected to a lien by the Government where a contractor or subcontractor misappropriates taxes withheld. Delay between default in payment of withheld taxes and notice thereof makes it extremely difficult, if not impossible, for a contractor or subcontractor to protect himself by filing a mechanic's lien that would take precedence over the lien of a tax collecting authority.

National Lumber & Building Material Dealers Association

The association is concerned with respect to the provision which gives the Government the same rights with respect to liens for withholding taxes that employees have with respect to liens for wages (see, sec. 3506, p. 34). This would appear to be a distorted method of devising a tax collection mechanism and would impose an unfair burden on a contractor. While no one can defend the wrong of failure to pay withheld taxes, the imposition of a penalty on a third party contractor for the failure of the subcontractor to meet his legal obligations could become a second wrong imposed by law. The solution to the Government's collection problem would appear to lie in the perfection of the Government's collection mechanism and provision of adequate enforcement personnel. As a practical matter the provision would limit the choice of subcontractors to those who could, beyond question, demonstrate compliance with tax withholding and payment requirements. This, in turn, would increase the cost of construction which would be passed on to the consumers, and to such extent contribute to inflationary tendencies.

United States Savings & Loan League

The league is concerned over the provision which gives the Government the same rights with respect to liens for withholding taxes that employees have with respect to liens for wages (see, sec. 3506, p. 34) since it would impose upon real estate lenders some responsibility for withholding for taxes from the wages of workers employed by contractors or subcontractors engaged in construction upon the security for the mortgage lien. The league hopes that the final version of the bill wlll clearly relieve mortgagees from any such enlarged responsibility.

Frank R. Kennedy

Mr. Kennedy sees no serious difficulty or objection to the provision which gives the Government the same rights with respect to liens for withholding taxes that employees have with respect to liens for wages (see, sec. 3506, p. 34) other than the additional expense and administrative burden imposed on whoever is required to determine and pay out withholding taxes.

American Land Title Association

The provision relating to agreements to extend the time limitation to perfect a lien for withheld taxes (sec. 3506(d), p. 37) should be amended to add a recording requirement. The subsection should be further amended to make clear with whom the Government is to enter into an agreement.

L. Hart Wright, professor of law, University of Michigan

The provision which in effect provides that the Government shall have the same rights with respect to liens for withholding taxes that employees have with respect to liens for wages (sec. 3506, p. 34) should not require that the Government file separately in order to perfect its liens. The filing by the employee should be deemed to constitute a filing by the Government. The provision, however, should allow the Government the alternative remedy of perfecting its lien itelf on actions.

American Insurance Association

The members of the association are divided on the proposed amendment to the Miller Act (p. 37) which would require performance bonds furnished by prime contractors on Federal public works contracts to provide coverage for withholding tax liability. Consistency in the Government theory as to the nature of the liability under this proposal requires that if withholding taxes measured by wages are to be covered, the right to recovery should be conditioned upon notice to the surety of the Government's claim within a reasonable cutoff period.

The provision should be amended to read that performance bonds "shall be construed to provide coverage for taxes" instead of "shall specifically provide coverage for taxes" in order to save the cost and efforts involved in distributing new performance bonds.

VI. Comments on Suspending the Statute of Limitations (See Sec. 6503(c), etc., p. 38)

American Bar Association (Claude S. Cravens and John E. Scheifly)

The provision which extends the statute of limitations for a period of 6 months whenever a taxpayer leaves the country (sec. 6502, p. 39) makes it virtually impossible for a title search to determine the status of a Government's lien against any taxpayer. This is an unwieldy approach to the problem.

William T. Plumb, Jr.

Mr. Plumb questions whether it is sound policy to provide that the statute of limitations on collection is suspended (while assets of the deceased or incompetent taxpayer are in custody of a court as is provided in sec. 6503(b), (p. 38)). He also questioned the wisdom of suspending the statute of limitations when a taxpayer leaves the country as is provided in the manner provided in section 6503(c), page 38.

VII. Comments on Discharge of Liens, etc. (Sec. 7425, p. 42)

Pittsburgh National Bank and Pennsylvania Bar Association

Both writers suggest amending the provision relating to the discharge of liens by judicial proceedings (see, sec. 7425(a), p. 42) so that in Pennsylvania when a real estate mortgagee is foreclosed in a customary manner notice to the United States will be sufficient to discharge tax lien. This would put a Pennsylvanian mortgagee in the same relative position as is the lender in a deed of trust under the laws of other States. (In Pennsylvania, the instrument evidencing the borrower's obligation customarily contains his warrant of attorney

authorizing the clerk of the county court or any attorney of any court of record to appear for him and confess judgment. Execution upon the judgment may immediately issue on the mortgage premises owned by the debtor upon public notice.) (William H. Mackus, esq., of Pennsylvania, agrees with the comment.)

The bank suggests amending the title of the provision relating to the discharge of Federal tax liens by nonjudicial sales (sec. 7425(b), p. 43) so that it reads "Nonjudicial and Quasi-Nonjudicial sales".

American Bankers Association

The provision which requires that the United States be given at least 25 days' notice of a nonjudicial sale of property subject to a lien of the United States in order for the lien of the United States to be discharged (see, sec. 7425(b)(1), p. 43) will interfere with the rights of holders of prior liens whose interests may require an immediate sale, such as securities subject to a declining market or perishable commodities. It is therefore recommended that section 7425(b)(2) is amended to provide that notice to the United States is not required to discharge a lien on personal property where the personal property is sold in a nonjudicial sale to satisfy a lien superior to a lien of the United States.

The provision which enables discharging certain tax liens by nonjudicial sales upon merely giving the Government due notice of the sale (sec. 7425(b), p. 43) should be amended so that it applies with respect to foreclosures in those States where the simplified procedure takes the form of a judicial execution sale pursuant to a confession of judgment embodied in a secured obligation.

The requirement that the Government receive 25 days notice of a nonjudicial sale may be unduly burdensome in certain cases. It may be possible to eliminate this burden by dispensing with notice or providing a shorter notice period where the value of the property is under a certain amount or where the property is perishable or too expensive to conserve. Moreover, fairness seems to require that the Government's remedies in case of a sale without property notice be against the deceased party and not against the purchaser.

This section does not apply to nonjudicial sales pursuant to statutory liens (such as liens for real property taxes and possessory liens). It should be broadened to embrace nonjudicial sales pursuant to such liens in order to protect the Government by requiring that it receive notice of the sale and as redemption rights it does not now enjoy.

American Land Title Association

Section 7425(d) (p.45). The provision which gives the United States the right to redeem property sold in nonjudicial sale to satisfy a lien prior to that of the United States within a period of 120 days from the date of the sale provides that the Government has the right to execute a certificate of redemption to effect the transfer of title to the property in certain cases (see sec. 7425(d)(3), p. 44). This could result in two conflicting titles, one under State law and one under Federal law.

William T. Plumb, Jr.

The provision granted a person who claims an interest in or lien or property to bring a civil Government action (sec. 7426(a), p. 47) requires a showing of irrevocable injuries to maintaining the action.

This requirement should not extend to maintaining the suit but only should be a condition to obtaining certain relief.

American Land Title Association

The provision relating to the redemption price paid by the United States for real property sold on the foreclosure of a lien superior to the Government's lien (see, sec. 2410(b) of title 28, p. 56) may be in conflict with the redemption requirements of a State law. This gives rise to questions as to the validity of an attempted redemption which is not recognized by a purchaser or a State officer.

William T. Plumb, Jr.

The provision allowing the joinder of the Government in certain proceedings (sec. 2410 of title 28 of the United States Code, p. 56) should be redrafted. Mr. Plumb here suggests a technical change.

The categories of cases in which the Government may be joined under this section should be expanded to include an action or a suit "to subject a decedents' real estate to the payment of debts."

The requirement in this joinder provision that the Government receive specific notice with regard to its lien or interest should indicate that the reference is to the lien or interest filed before commencement of the action. This would eliminate any question as to whether or not notice of liens filed subsequent to the commencement of this suit is required.

VIII. General Comments

Frank R. Kennedy

Mr. Kennedy believes that it is unfortunate that the bill does not deal with Federal priorities in solvency proceedings.

L. Hart Wright, professor of law, University of Michigan

Mr. Wright suggests that a government's claim in bankruptcy for unpaid withholding taxes should enjoy the same priority as does the employees' wages.

SECTION 8

BILL AS REPORTED BY THE COMMITTEE ON WAYS AND MEANS

Union Calendar No. 863

89TH CONGRESS
2D SESSION

H. R. 11256

[Report No. 1884]

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 24, 1965

Mr. MILLS introduced the following bill; which was referred to the Committee on Ways and Means

AUGUST 24, 1966

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Internal Revenue Code of 1954 with respect to the priority and effect of Federal tax liens and levies, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

~~**SECTION 1. SHORT TITLE, ETC.**~~

~~(a) SHORT TITLE.—This Act may be cited as the "Federal Tax Lien Act of 1965".~~

~~(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall~~

~~be considered to be made to a section or other provision of the Internal Revenue Code of 1954.~~

[TITLE I—PRIORITY AND EFFECT OF TAX LIENS AND LEVIES]

~~**SEC. 101. PRIORITY OF LIENS.**~~

~~Section 6323 (relating to validity of tax liens against mortgagees, pledgees, purchasers, and judgment creditors) is amended to read as follows:~~

~~**"SEC. 6323. VALIDITY AND PRIORITY AGAINST CERTAIN PERSONS.**~~

~~"(a) INVALIDITY OF LIEN WITHOUT NOTICE.—Except as otherwise provided in this section, the lien imposed by section 6321 shall not be valid as against any purchaser, mechanic's lienor, judgment lien creditor, or holder of a security interest until notice thereof has been filed by the Secretary or his delegate—~~

~~"(1) UNDER STATE LAWS.—~~

~~"(A) REAL PROPERTY.—In the case of real property, in one office within the State, county or other governmental subdivision in which the property subject to the lien is situated, as designated by the laws of such State;~~

~~"(B) PERSONAL PROPERTY.—In the case of personal property, whether tangible or intangible, in one office in the State, county or other govern-~~

~~mental subdivision in which the property is situated, as designated by the laws of such State; or~~

~~"(2) With clerk of district court.—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State has not by law designated an office described in paragraph (1) or has designated more than one such office for the filing of such notice within the State, county or other governmental subdivision in which such property is situated; or~~

~~"(3) With clerk of district court for District of Columbia.—In the office of the clerk of the United States District Court for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.~~

~~"(b) Form of Notice.—The form of the notice (described in subsection (a)(1)) shall be established by the Secretary or his delegate. Such notice shall be valid notwithstanding any law regarding the form or content of a notice of lien.~~

~~"(c) Situs of Property Subject to Lien.—~~

~~"(1) Situs of property.—For purposes of subsection (a), property shall be deemed to be situated—~~

~~"(A) REAL PROPERTY.—In the case of real property, at its physical location;~~

~~"(B) PERSONAL PROPERTY.—In the case of personal property whether tangible or intangible, at the residence of the taxpayer at the time such notice of lien is filed.~~

~~"(2) RESIDENCE.—For purposes of paragraph (1) (B)—~~

~~"(A) The residence of a corporation or partnership shall be deemed to be the place at which the principal executive office of the business is located.~~

~~"(B) The residence of a taxpayer whose residence is without the United States shall be deemed to be Washington, D.C.~~

~~"(d) INVALIDITY OF LIEN IN CERTAIN CASES.—Even though notice of a lien imposed by section 6321 has been filed as provided in subsection (a), such lien shall not be valid—~~

~~"(1) SECURITIES.—With respect to a security (as defined in subsection (h) (1)), as against a holder of a security interest in, or purchaser of, such security for an adequate and full consideration in money or money's worth, if at the time such security interest arose (or was acquired from a previous holder) or at the time of such~~

~~purchase such person did not have actual notice or knowledge of such lien;~~

~~"(2) MOTOR VEHICLES.—With respect to a motor vehicle (as defined in subsection (h)(5)), as against a purchaser of such motor vehicle for an adequate and full consideration in money or money's worth, if at the time of such purchase such purchaser did not have actual notice or knowledge of the existence of such lien and such purchaser, prior to obtaining such notice or knowledge acquires possession of such motor vehicle and does not thereafter relinquish possession of such motor vehicle to the seller or his agent;~~

~~"(3) PROPERTY PURCHASED AT RETAIL.—With respect to tangible personal property purchased at retail, in the ordinary course of the seller's trade or business;~~

~~"(4) PROPERTY SUBJECT TO POSSESSORY LIENS.—With respect to property subject to a lien under local law securing the reasonable price of the improvement, alteration, or repair of tangible personal property, as against a holder of such a lien, if such person is, and has been, continuously in possession of such property from the time such lien arose;~~

~~"(5) ATTORNEYS' LIENS.—With respect to a judgment or an amount in settlement of a cause of action, as against an attorney who holds a lien under local law~~

~~upon such judgment or amount, to the extent of his reasonable compensation for obtaining such judgment or procuring such settlement;~~

~~"(6) Real property tax and special assessment liens.—With respect to real property, as against a holder of a lien upon such property, if such lien is entitled under local law to priority over security interests in such property which are prior in time, and such lien—~~

~~"(A) secures the payment of a tax of general application levied by any taxing authority based upon the value of such property;~~

~~"(B) secures the payment of a special assessment imposed directly upon such property by any taxing authority, if such assessment is imposed for the purpose of defraying the cost of any public improvement; or~~

~~"(C) secures payment of charges for utilities or public services furnished to such property.~~

~~"(7) Certain insurance contracts.—With respect to a life insurance, endowment, or annuity contract owned by the person against whom is assessed the tax out of which such lien arose, as against the organization which is the insurer under such contract, at any time—~~

~~"(A) before such organization had actual notice or knowledge of such lien;~~

~~"(B) after such organization had such notice or knowledge, with respect to advances (including contractual interest thereon) required to be made to maintain such contract in force automatically under an agreement entered into before such organization had such notice or knowledge;~~

~~"(C) after satisfaction of a levy pursuant to section 6332 (b), unless and until the Secretary or his delegate delivers to such organization a new notice of the lien, executed after the date of such satisfaction."~~

~~Paragraph (3) shall not apply to a purchase if at the time of the purchase the purchaser intends or knows that the purchase is intended to hinder, evade, or defeat the collection of any tax. Paragraph (5) shall not apply to any part of a judgment or of an amount in settlement of a cause of action which the Secretary or his delegate credits against any liability of the taxpayer under section 6402 (relating to authority to make credits or refunds).~~

~~"(e) PRIORITY OF INTEREST AND EXPENSES.—If the lien imposed by section 6321 is not valid as against a lien or security interest described in subsection (a) or (d) of this~~

~~section, the priority of such lien or security interest shall, if local law or an agreement valid under local law so provides, extend to—~~

~~"(1) any interest upon the obligation secured,~~

~~"(2) the reasonable charges and expenses of an indenture trustee or agent holding the security interest for the benefit of the holder of the security interest,~~

~~"(3) the reasonable and necessary expenses, including attorney's fees, actually incurred in collecting or enforcing the obligation secured,~~

~~"(4) the reasonable and necessary costs of insuring, preserving, or repairing the property subject to such lien or insuring such security interest, and~~

~~"(5) amounts paid to satisfy a lien on such property, but only if such lien is entitled to priority over the lien imposed by section 6321.~~

~~"(f) FUTURE ADVANCES.—~~

~~"(1) DATE OF PRIORITY.—Except for purposes of this subsection and subsection (g), the priority of the lien imposed by section 6321, as against the holder of a security interest which arose (within the meaning of subsection (h)(4)(B)) prior to the filing pursuant to subsection (a) of notice of such lien, shall be determined as though such notice were filed 45 days after the date of actual filing or, if earlier, the first date on~~

~~or after the date of filing of such notice on which holder had actual notice or knowledge of such lien.~~

~~“(2) Obligatory advances.—Without regard to the date of disbursement, the priority of a security interest which arose prior to the filing pursuant to subsection (a) of notice of the lien imposed by section 6321 shall extend to disbursements made pursuant to a written contractual obligation in negotiable form or which runs to a person other than the taxpayer, if such obligation was undertaken prior to such filing and obligates the holder of such security interest to make such disbursements on the happening of an event beyond the control of such holder. The priority granted by this paragraph shall apply only with respect to—~~

~~“(A) property owned by the taxpayer and subject to the security interest within 45 days after such filing,~~

~~“(B) any other property (including money or rights to money), to the extent that the purchase, completion, production, or earning of such property was financed by such disbursements and such property was the security for such security interest, and~~

~~“(C) if the security interest is held by a surety and indemnifies the surety against a loss or liability~~

~~arising from a surety obligation, the proceeds of a contract in connection with which the surety obligation was undertaken and any other property acquired by the taxpayer for the purpose of performing such contract.~~

~~"(3) COMPLETION ADVANCES.—~~

~~"(A) PRIORITY OF ADVANCES.—Without regard to the date of disbursement, the priority of a security interest which arose prior to the filing pursuant to subsection (a) of notice of the lien imposed by section 6321 shall extend to disbursements made to finance—~~

~~"(i) the purchase, construction, improvement, alteration, repair, or demolition of real property subject to the security interest,~~

~~"(ii) the performance or completion of a contract for the construction, improvement, alteration, repair, or demolition of real property, the proceeds of which are subject to the security interest, or~~

~~"(iii) the raising or harvesting of a crop or the raising of livestock.~~

~~"(B) APPLICATION OF PRIORITY.—The priority granted by this paragraph shall apply only with respect to—~~

~~"(i) the property (including money or rights to money), the purchase, construction, improvement, alteration, repair, demolition, earning, raising or harvesting of which was financed by such disbursements,~~

~~"(ii) in the case of disbursements to which subparagraph (A) (i) applies, the proceeds of a contract for the use of such property, but only if such contract was entered into on or before the date on which the security interest arose, and~~

~~"(iii) in the case of disbursements to which subparagraph (A) (iii) applies, any other property owned by the taxpayer and subject to the security interest within 45 days after filing of notice of such lien~~

~~"(4) SPECIAL RULE.—This subsection shall apply only if all requisite actions under local law to protect the priority of such security interest are taken.~~

~~"(g) PRIORITY UNDER CERTAIN FINANCING AGREEMENTS.—If, prior to the filing pursuant to subsection (a) of notice of the lien imposed by subsection 6321, a written financing agreement providing for loans on the security of or the purchase of accounts, contract rights, chattel paper, documents, notes, instruments or mortgages is entered into~~

~~and is valid under local law, and all requisite actions under local law are taken to protect security interests or purchases under such financing agreement against a subsequent lien obtainable by legal or equitable proceedings on a simple contract, then such lender or purchaser shall have priority over the lien imposed by section 6321 with respect to all such security interests acquired or purchases made prior to—~~

~~"(1) 45 days after such filing of notice, or~~

~~"(2) if earlier, the first date on or after the date of such filing on which such lender or purchaser had actual notice of knowledge of such lien.~~

~~"(h) DEFINITIONS.—For purposes of sections 6323 and 6324—~~

~~"(1) SECURITY.—The term 'security' means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instument; or money.~~

~~"(2) PURCHASER.—Except as otherwise provided~~

~~in this section, the term 'purchaser' means a person who, for adequate and full consideration in money or money's worth, acquires an interest (other than a security interest) in property, including a lease on such property, a written executory contract to purchase or lease such property, or an option to purchase or lease such property or an interest therein, or an option to renew or extend the term of such a lease, provided the interest so acquired is valid under local law against subsequent purchasers without actual notice.~~

~~"(3) MECHANIC'S LIENOR.—The term 'mechanic's lienor' means any person who under local law has a lien on real property or on the proceeds of a contract relating to such property, for services, labor, or materials. If all requisite actions under local law are taken, whether prior or subsequent to the filing of notice of the lien imposed by section 6321, to perfect, maintain, and enforce such lien, such lien shall be deemed to have priority as against a lien imposed by section 6321, notice of which has been filed pursuant to subsection (a), on the earliest date it becomes valid under local law against subsequent purchasers without actual notice, but in no event before the commencement of the actual performance of the service or labor or supplying of material.~~

~~"(4) Security interest.—~~

~~"(A) Definition.—The term 'security interest' means any interest in property acquired by contract for an adequate and full consideration in money or money's worth for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability.~~

~~"(B) Effect.—A security interest shall be deemed to arise at the time when it becomes protected under local law as against a subsequent lien upon such property obtainable by legal or equitable proceedings on a simple contract.~~

~~"(5) Motor vehicle.—The term 'motor vehicle' means a self-propelled vehicle which is registered for highway use under the laws of any State or foreign country.~~

~~"(i) Special Rules.—~~

~~"(1) Disclosure of amount of outstanding lien.—If a notice of lien has been filed pursuant to subsection (a), the Secretary or his delegate is authorized to provide by rules or regulations the extent to which, and the conditions under which, information as to the amount of the outstanding obligation secured by the lien may be disclosed.~~

~~“(2) ACTUAL NOTICE OR KNOWLEDGE.—For purposes of this subchapter and sections 3505 and 3506, an organization shall be deemed for purposes of a particular transaction to have actual notice or knowledge of any fact from the time such fact is brought to the attention of the individual conducting such transaction, and in any event from the time such fact would have been brought to such individual’s attention if the organization had exercised due diligence.~~

~~“(3) CONSIDERATION IN MONEY OR MONEY’S WORTH.—For purposes of this subchapter, the term ‘money or money’s worth’ shall include forbearance to sue or take other action to collect or enforce an antecedent debt or obligation.~~

~~“(4) SUBROGATION.—Any person having a contractual, equitable or statutory right of subrogation to any lien or interest which has priority over a lien under section 6321 shall enjoy a like priority.~~

~~“(5) FIXTURES.—For purposes of this section, the priority of a security interest with respect to property shall extend to any property which is attached to and physically becomes an integral part of the property subject to such security interest.”~~

~~**SEC. 102. SPECIAL LIENS FOR ESTATE AND GIFT TAXES.**~~

~~Section 6324 (relating to special liens for estate and gift taxes) is amended to read as follows:~~

~~**"SEC. 6324. SPECIAL LIENS FOR ESTATE AND GIFT TAXES.**~~

~~"(a) LIENS FOR ESTATE TAX.—Except as otherwise provided in subsection (c) (relating to exceptions)—~~

~~"(1) UPON GROSS ESTATE.—Unless the estate tax imposed by chapter 11 is sooner paid in full, or becomes unenforceable by reason of lapse of time, it shall be a lien upon the gross estate of the decedent for 10 years from the date of death, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien.~~

~~"(2) LIABILITY OF TRANSFEREES AND OTHERS.—If the estate tax imposed by chapter 11 is not paid when due, then the spouse, transferee, trustee (except the trustee of an employees' trust which meets the requirements of section 401(a)), surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042, inclusive, to the extent of the value,~~

~~at the time of the decedent's death, of such property, shall be personally liable for such tax. Any part of such property transferred by (or transferred by a transferee of) such spouse, transferee, trustee, surviving tenant, person in possession of property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, to a bona fide purchaser or a holder of a security interest, for an adequate and full consideration in money or money's worth shall be divested of the lien provided in paragraph (1) and a like lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, beneficiary, or transferee of any such person, except any part transferred to a bona fide purchaser or holder of a security interest for an adequate and full consideration in money or money's worth.~~

~~"(3) CONTINUANCE AFTER DISCHARGE OF EXECUTOR.—The provisions of section 2204 (relating to discharge of executor from personal liability) shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless such part of the gross estate (or any interest therein) has been transferred to a bona fide purchaser or holder of a security interest for an ade-~~

~~quate and full consideration in money or money's worth, in which case such part (or such interest) shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser or holder of a security interest, by the heirs, legatees, devisees, or distributees.~~

~~"(b) LIEN FOR GIFT TAX.—Except as otherwise provided in subsection (c) (relating to exceptions), unless the gift tax imposed by chapter 12 is sooner paid in full or becomes unenforceable by reason of lapse of time, such tax shall be a lien upon all gifts made during the calendar year for 10 years from the date such gifts are made. If the tax is not paid when due, the donee of any gift shall be personally liable for such tax to the extent of the value of such gift. Any part of the property comprised in the gift transferred by the donee (or by a transferee of the donee) to a bona fide purchaser or holder of a security interest for an adequate and full consideration in money or money's worth shall be divested of the lien herein imposed and the lien, to the extent of the value of such gift, shall attach to all the property (including after-acquired property) of the donee (or the transferee) except any part transferred to a bona fide pur-~~

~~chaser or holder of a security interest for an adequate and full consideration in money or money's worth.~~

~~"(c) EXCEPTIONS.—~~

~~"(1) The lien imposed by subsections (a) or (b) shall not be valid—~~

~~"(A) with respect to any lien or interest described in section 6323(d) (relating to invalidity of lien in certain cases), or~~

~~"(B) as against a mechanic's lienor.~~

~~"(2) If a lien or security interest is entitled to priority over the lien imposed by subsections (a) or (b), such priority shall, if local law or an agreement valid under local law so provides, extend to the items described in section 6323(e) (relating to priority of interest and expenses).~~

~~"(d) CROSS REFERENCE.—For definitions of the terms 'purchaser', 'security interest', and 'mechanic's lienor', see section 6323(h)."~~

~~**SEC. 103. CERTIFICATES RELATING TO LIENS.**~~

~~(a) DETERMINATION OF VALUE OF INTEREST.—Section 6325(b) (relating to partial discharge of property from~~

~~lien) is amended by striking out "fair market" in the sentence following paragraph (2)(B).~~

~~(b) Sale Proceeds Substituted for Discharged Property.—Section 6325(b) is further amended by adding at the end thereof the following new paragraph:~~

~~"(3) Substitution of proceeds of sale.—Subject to such rules or regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to the lien if such property is sold and, pursuant to an agreement with the Secretary or his delegate, the proceeds of such sale are to be held as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as such liens and claims had with respect to the discharged property."~~

~~(c) Effect of Certain Certificates.—Section 6325 (relating to release of lien or partial discharge of property) is amended by striking out subsection (d), redesignating subsection (e) as subsection (h), and by inserting after subsection (c) the following new subsections:~~

~~"(d) Subordination of Lien.—Subject to such rules or regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate~~

~~of subordination of any lien imposed by this title upon any part of the property subject to such lien if—~~

~~“(1) there is paid over to the Secretary or his delegate an amount equal to the amount of the lien or interest to which the certificate subordinates the lien of the United States, or~~

~~“(2) the Secretary or his delegate believes that the amount realizable by the United States from the property to which the certificate relates, or from any other property subject to the lien, will ultimately be increased by reason of the issuance of such certificate and that the ultimate collection of the tax liability will be facilitated by such subordination.~~

~~“(e) NONATTACHMENT OF LIEN.—If the Secretary or his delegate determines that, because of confusion of names or otherwise, any person (other than the person against whom the tax was assessed) is or may be injured by the appearance that a notice of lien filed under section 6323 refers to such person, the Secretary or his delegate may issue a certificate that the lien does not attach to the property of such person.~~

~~“(f) EFFECT OF CERTIFICATE.—~~

~~“(1) CONCLUSIVENESS.—Except as provided in paragraphs (2) and (3), if a certificate is issued pur-~~

~~suant to this section by the Secretary or his delegate and is filed in the same office as the notice of lien to which it relates (if such notice of lien has been filed) such certificate shall have the following effect:~~

~~"(A) in the case of a certificate of release, such certificate shall be conclusive that the lien covered by such certificate is extinguished;~~

~~"(B) in the case of a certificate of discharge, such certificate shall be conclusive that the property covered by such certificate is discharged from the lien;~~

~~"(C) in the case of a certificate of subordination, such certificate shall be conclusive that the lien or interest to which the lien of the United States is subordinated is superior to the lien of the United States; and~~

~~"(D) in the case of a certificate of nonattachment, such certificate shall be conclusive that the lien of the United States does not attach to the property of the person described in such certificate.~~

~~"(2) REVOCATION OF CERTIFICATE OF RELEASE AND NONATTACHMENT.—If the Secretary or his delegate determines that a certificate of release or nonattachment was issued erroneously or improvidently, or if any certificate provided in this section was issued pursuant~~

~~to a collateral agreement entered into in connection with an offer in compromise under section 7122 which has been breached, and if the period of limitation on collection after assessment has not expired, the Secretary or his delegate may revoke such certificate and reinstate the lien as of its original effective date—~~

~~"(A) by mailing notice of such revocation to the last known address of the person against whom the tax was assessed, and~~

~~"(B) by filing notice of such revocation in the same office as the notice of lien to which it relates (if such notice of lien has been filed).~~

~~This paragraph shall not apply with respect to the interest of any person (other than the person against whom the tax was assessed), or a transferee of such interest, in any property with respect to which such person or his transferor has in good faith taken substantial action to his detriment with respect to such property in reliance upon such a certificate prior to the time he receives actual notice or knowledge of such revocation.~~

~~"(3) CERTIFICATES VOID UNDER CERTAIN CONDITIONS.—Notwithstanding any other provision of this subtitle, the attachment of any lien imposed by this title to any property with respect to which a certificate~~

~~of discharge or nonattachment has been issued shall not be barred if the person liable for the tax acquires or reacquires such property after such certificate has been issued.~~

~~“(g) FILING OF CERTIFICATES AND NOTICES.—If a certificate or notice issued pursuant to this section may not be filed in the office designated by State law in which the notice of lien imposed by section 6321 is filed, such certificate or notice shall be effective if filed in the office of the clerk of the United States district court for the judicial district in which such office is situated. If such certificate or notice is in the form prescribed by the Secretary or his delegate, the clerk of any United States district court shall accept such certificate or notice for filing.”~~

~~(d) TECHNICAL AMENDMENTS.—~~

~~(1) AMENDMENT OF SECTION 6325.—Paragraph (4) of section 6325(h) (relating to cross reference) (as redesignated by section 103(c) of this Act) is amended to read as follows:~~

~~“(4) For provisions relating to proceedings by third parties against the United States, see section 7426.”~~

~~(2) CHANGE OF HEADING OF SECTION 6325.—Section 6325 is amended by striking out the heading and inserting in lieu thereof:~~

~~"SEC. 6325. CERTIFICATES RELATING TO LIENS."~~

~~(3) AMENDMENT OF TABLE OF SECTIONS.—The table of sections of subchapter C of chapter 64 is amended by striking out~~

~~"Sec. 6325. Release of lien and partial discharge of property."~~

~~and inserting in lieu thereof~~

~~"Sec. 6325. Certificates relating to liens."~~

~~**SEC. 104. SEIZURE OF PROPERTY FOR COLLECTION OF TAXES.**~~

~~(a) EFFECT OF LEVY.—Section 6331 (b) (relating to seizure and sale of property by levy and distraint) is amended by inserting after the first sentence the following new sentence: "A levy shall extend only to property possessed and obligations existing at the time thereof."~~

~~(b) SURRENDER OF PROPERTY SUBJECT TO LEVY.—Section 6332 (relating to surrender of property subject to levy) is amended—~~

~~(1) by striking out "Any person" in subsection~~

~~(a) and inserting in lieu thereof "Except as otherwise provided in subsection (b), any person";~~

~~(2) by striking out subsection (b) and inserting in lieu thereof the following new subsection:~~

~~"(b) SPECIAL RULE FOR LIFE INSURANCE AND ENDOWMENT CONTRACTS.—~~

~~"(1) IN GENERAL.—A levy on an organization with respect to a life insurance or endowment contract issued by such organization shall, without necessity for the surrender of the contract document, constitute a demand by the Secretary or his delegate for payment of the amount described in paragraph (2) and the exercise of the right of the person against whom the tax is assessed to the advance of such amount. Such organization shall pay over such amount 90 days after service of notice of levy. Such notice shall include a certification by the Secretary or his delegate that a copy of such notice has been mailed to the person against whom the tax is assessed at his last known address.~~

~~"(2) SATISFACTION OF LEVY.—Such levy shall be deemed to be satisfied if such organization pays over to the Secretary or his delegate the amount which the person against whom the tax is assessed could have had advanced to him by such organization on the date prescribed in paragraph (1) for the payment of such levy,~~

~~increased by the amount of any advance (including contractual interest thereon) made to such person on or after the date such organization had actual notice or knowledge of the lien upon which such levy is based, other than an advance (including contractual interest thereon) made to maintain such contract in force automatically under an agreement entered into before such organization had such notice or knowledge.~~

~~"(3) ENFORCEMENT PROCEEDINGS.—The satisfaction of a levy under paragraph (2) shall be without prejudice to any civil action for the enforcement of any lien with respect to such contract."~~

~~(3) by redesignating subsection (c) as subsection (e);~~

~~(4) by inserting before subsection (e) as redesignated the following new subsections:~~

~~"(c) ENFORCEMENT OF LEVY.—".~~

~~"(1) EXTENT OF PERSONAL LIABILITY.—Any person who fails or refuses to surrender any property or rights to property, subject to levy, upon demand by the Secretary or his delegate, shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of taxes for the collection of which such levy has been made, together with costs and~~

~~interest on such sum at the rate of 6 percent per annum from the date of such levy. Any amount (other than costs) recovered under this paragraph shall be credited against the liability for taxes and interest for the collection of which such levy was made.~~

~~"(2) PENALTY FOR VIOLATION.—In addition to the personal liability imposed by paragraph (1), if any person required to surrender property or rights to property fails or refuses to surrender such property or rights to property without just cause, such person shall pay a penalty equal to 50 percent of the amount recoverable under paragraph (1). No part of such penalty shall be credited against the tax liability for the collection of which levy was made.~~

~~"(d) EFFECT OF HONORING LEVY.—Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the Secretary or his delegate, surrenders such property or rights to property (or discharges such obligation) to the Secretary or his delegate (or who pays a liability under subsection (c)(1)) shall be discharged from any obligation or liability to the delinquent taxpayer with respect to such property or rights to property arising from such surrender or payment. In the case of a levy which is satisfied pursuant to subsection (b),~~

~~such organization shall also be discharged from any obligation or liability to any beneficiary arising from such surrender or payment."~~

~~(c) PROPERTY EXEMPT FROM LEVY.—Section 6334(a) (relating to enumeration of property exempt from levy) is amended—~~

~~(1) by striking out "or Territory" in paragraph (4); and~~

~~(2) by adding at the end thereof the following new paragraph:~~

~~"(5) CERTAIN ANNUITY AND PENSION PAYMENTS.—Annuity or pension payments under the Railroad Retirement Act, benefits under the Railroad Unemployment Insurance Act, special pension payments received by a person whose name has been entered on the Army, Navy, and Air Force Medal of Honor roll (38 U.S.C. 562), and annuities based on retired or retainer pay under chapter 73 of title 10 of the United States Code."~~

~~(d) PUBLICATION OF NOTICE OF SALE.—The first sentence of section 6335(b) (relating to notice of sale of seized property) is amended to read as follows: "The Secretary or his delegate shall as soon as practicable after the seizure of the property give notice to the owner, in the manner prescribed in subsection (a), and shall cause a notification to be~~

~~published in some newspaper published or generally circulated within the county wherein such seizure is made, or, if there be no newspaper published or generally circulated in such county, shall post such notice at the post office nearest the place where the seizure is made, and in not less than two other public places."~~

~~(e) REDEMPTION PERIOD.—Paragraph (1) of section 6337(b) (relating to period of redemption of real estate after sale) is amended by striking out "1 year" and inserting in lieu thereof "120 days".~~

~~(f) PREPARATION OF DEED.—Section 6338(c) (relating to real property purchased by United States) is amended to read as follows:~~

~~"(c) REAL PROPERTY PURCHASED BY UNITED STATES.—If real property is declared purchased by the United States at a sale pursuant to section 6335, the Secretary or his delegate shall at the proper time execute a deed therefor, and without delay, cause such deed to be duly recorded in the proper registry of deeds."~~

~~(g) DISCHARGE OF JUNIOR ENCUMBRANCES.—Section 6339 (relating to legal effect of certificate of sale of personal property and deed of real property) is amended by adding at the end thereof the following new subsections:~~

~~"(c) EFFECT ON JUNIOR ENCUMBRANCES.—A certificate of sale of personal property given or a deed to real~~

~~property executed pursuant to section 6338 shall discharge such property from all liens, encumbrances, and titles over which the lien of the United States upon which the levy was based had priority.~~

~~"(d) CROSS REFERENCES.—~~

> ~~"(1) For distribution of surplus proceeds, see section 6342(b).~~
>
> ~~"(2) For judicial procedure with respect to surplus proceeds, see section 7426(b)(3)."~~

~~(h) APPLICATION OF PROCEEDS OF LEVY AND SALE.—Section 6342(a) (relating to collection of liability) is amended—~~

~~(1) by striking out so much of subsection (a) as precedes paragraph (1) and inserting in lieu thereof "Any money realized by proceedings under this subchapter (whether by seizure, by surrender under section 6332 (except pursuant to section 6332(b)(2)), or by sale of seized property) or by sale of property redeemed by the United States (if the interest of the United States in such property was a lien arising under the provisions of this title) shall be applied as follows:";~~

~~(2) by striking out "under this subchapter" in paragraph (1); and~~

~~(3) by adding "or the sale was conducted" after "levy was made" in paragraph (3).~~

~~(i) RETURN OF PROPERTY.—Section 6343 (relating to authority to release levy) is amended—~~

~~(1) by striking out the heading of such section and inserting in lieu thereof the following:~~

~~**"SEC. 6343. AUTHORITY TO RELEASE LEVY AND RETURN PROPERTY.";**~~

~~(2) by striking out "It shall be" and inserting in lieu thereof "(a) RELEASE OF LEVY.—It shall be"; and~~

~~(3) by adding at the end thereof the following new subsection:~~

~~"(b) RETURN OF PROPERTY.—If the Secretary or his delegate determines that property has been wrongfully levied upon, it shall be lawful for the Secretary or his delegate to return—~~

~~"(1) the specific property (other than money) levied upon,~~

~~"(2) an amount of money equal to the amount of money levied upon, or~~

~~"(3) an amount of money equal to the amount of money received by the United States from a sale of property pursuant to section 6335 or 6336.~~

~~Property (other than money) may be returned at any time. An amount equal to the amount of money levied upon or received from such sale may be returned at any time before the expiration of 9 months from the date of such levy. If~~

~~property is declared purchased by the United States at a sale pursuant to section 6335(e) (relating to manner and conditions of sale) the minimum price shall be considered to be the amount received by the United States at the sale of such property."~~

~~(j) TECHNICAL AMENDMENT.—The table of sections for subchapter D of chapter 64 is amended by striking out—~~

~~"Sec. 6343. Authority to release levy."~~

~~and inserting in lieu thereof~~

~~"Sec. 6343. Authority to release levy and return property."~~

~~**SEC. 105. STATUTORY LIEN FOR WITHHELD TAXES.**~~

~~(a) EFFECT ON THIRD PARTIES.—Chapter 25 (relating to general provisions relating to employment taxes) of subtitle C is amended by adding at the end thereof the following:~~

~~**"SEC. 3505. LIABILITY OF THIRD PARTIES PAYING OR PROVIDING FOR WAGES.**~~

~~"(a) DIRECT PAYMENT BY THIRD PARTIES.—For purposes of sections 3102, 3202, 3402, and 3403, if a lender, surety, or other person, who is not an employer under such sections, pays wages directly to an employee or group of employees, employed by one or more employers, or to an agent on behalf of such employee or employees, such lender, surety, or other person shall be liable in his own person and~~

~~estate to the United States in a sum equal to the taxes (together with interest) required to be deducted and withheld from such wages by such employer.~~

~~"(b) Personal Liability Where Funds Are Supplied.—If a lender, surety, or other person supplies funds to or for the account of an employer for the purpose of paying wages of the employees of such employer, with actual notice or knowledge that such employer does not intend to or will not be able to make timely payment or deposit of the amounts of tax required by this subtitle to be deducted and withheld by such employer from such wages, such lender, surety, or other person shall be liable in his own person and estate to the United States in a sum equal to the taxes (together with interest) which are not paid over to the United States by such employer with respect to such wages. However, the liability of such lender, surety, or other person shall be limited to an amount equal to 20 percent of the amount supplied to or for the account of such employer for such purpose.~~

~~"(c) Effect of Payment.—Any amounts paid to the United States pursuant to this section shall be credited against the liability of the employer.~~

~~**"SEC. 3506. LIENS FOR WITHHELD TAXES.**~~

~~"(a) General Rule.—If any taxes required by this subtitle to be deducted and withheld from wages paid by an employer to an employee for services performed in the~~

~~construction, improvement, alteration, repair, replacement, or demolition of any real property under a contract in which the price exceeds $2,000 (including any building or fixture attached thereto), other than a single family dwelling occupied or to be occupied by the owner thereof, are not paid over to the United States, the United States shall have the same rights (including liens), remedies, and priorities against any person or property to collect such unpaid taxes as are provided by any law for the collection of such wages by such employee.~~

~~"(b) PERFECTION OF RIGHTS.—~~

~~"(1) IN GENERAL.—Except as otherwise provided in paragraph (3), the United States shall perfect, maintain, and enforce its rights (including liens), remedies, and priorities, with respect to any such taxes for each quarterly period for which a return was required, by taking the same actions required by law of such employee for the collection of such wages.~~

~~"(2) EFFECT OF ACTIONS BY UNITED STATES.—If the United States takes the same actions required by law of such employee for the collection of such wages within the time prescribed in paragraph (3), such actions shall be deemed to be timely for all purposes. The rights of the United States arising from such timely actions shall have the same priority as the rights of~~

~~such employee would have if such employee had taken the same actions on the first day when such employee may take such actions.~~

~~"(3) TIME FOR FILING.—~~

~~"(A) GENERAL RULE.—Notwithstanding any other provision of law, the United States, with respect to amounts attributable to any calendar quarter, shall, except as provided in subparagraph (B), have the same period of time after the date when a return for such calendar quarter was required to be filed under section 6071 to meet any requirement of law as such employee, except that such period shall in no event be less than 30 days after the date when a return for such calendar quarter was required to be filed, or 30 days after the date on which a return for such quarter was filed (whichever 30-day period is the later).~~

~~"(B) LIMITATION.—The period of time allowable to the United States, with respect to the first requirement of law to be satisfied, shall not exceed 6 months from the date when a return for a calendar quarter was required to be filed under section 6071.~~

~~"(4) FILING OF CERTIFICATES AND NOTICES.—If a certificate or notice required by law may not be filed by the United States in the office designated by~~

~~State law for the filing of such a certificate or notice by such employee, such certificate or notice shall be effective if filed in the office of the clerk of the United States district court for the judicial district in which such office is situated.~~

~~"(c) Effect of Payment.—Any amounts paid to the United States pursuant to this section shall be credited against the liability of the employer. The person making such payments shall be relieved of any liability to the employer to the extent of such payments.~~

~~"(d) Foreclosure Agreements.—The Secretary or his delegate may enter into any agreement to extend or to waive any time limitation required by law to perfect, maintain, and enforce the rights (including liens), remedies, and priorities of the United States under this section.~~

~~"(e) Cross Reference.—For certificate releasing rights of the United States, see section 6325."~~

~~(c) Performance Bonds of Contractors for Public Buildings or Works.—The first section of the Act entitled "An Act requiring contracts for the construction, alteration, and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by an additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said~~

~~public buildings or public work", approved August 24, 1935 (49 Stat. 793; 40 U.S.C. 270a), is amended by adding at the end thereof the following new subsection:~~

~~"(d) Every performance bond required under this section shall specifically provide coverage for taxes imposed by the United States which are collected, deducted, or withheld from wages paid by the contractor in carrying out the contract with respect to which such bond is furnished."~~

~~(d) TECHNICAL AMENDMENT.—The table of sections of chapter 25 of subtitle C is amended by adding at the end thereof the following:~~

~~"Sec. 3505. Liability of third parties paying or providing for wages.~~
~~"Sec. 3506. Liens for withheld taxes."~~

~~**SEC. 106. SUSPENSION OF RUNNING OF PERIOD OF LIMITATION.**~~

~~(a) ASSETS OF ESTATES OF DECEDENT OR INCOMPETENT.—Section 6503(b) (relating to assets of taxpayer in control or custody of court) is amended by striking out "(other than the estate of a decedent or of an incompetent)" and the phrase "or Territory".~~

~~(b) COLLECTION HINDERED BY ABSENCE OF TAXPAYER.—Section 6503(c) (relating to location of property~~

~~outside the United States or removal of property from the United States) is amended to read as follows:~~

~~"(c) TAXPAYER OUTSIDE UNITED STATES.—The period of limitations on collection after assessment prescribed in section 6502 shall be suspended for any period during which the taxpayer is outside the United States and for 6 months thereafter."~~

~~(e) WRONGFUL SEIZURE OF PROPERTY OF THIRD PARTIES.—Section 6503(f) (relating to cross references) is amended by redesignating subsection (f) as subsection (g) and inserting after subsection (e) the following new subsection:~~

~~"(f) WRONGFUL SEIZURE OF PROPERTY OF THIRD PARTY.—The period of limitation on collection after assessment prescribed in section 6502 applicable to a taxpayer shall be suspended for a period equal to the period from the date property (including money) of a third party is wrongfully seized or received by the Secretary or his delegate to the date the Secretary or his delegate returns such property pursuant to section 6343 or the date of satisfaction by the Secretary or his delegate of a judgment secured pursuant to section 7426 with respect to such property, and for six~~

~~months thereafter. The period of limitations on collection after assessment shall be suspended under this subsection only with respect to the amount of such assessment equal to the amount of money or the value of specific property returned."~~

~~**SEC. 107. PROCEEDINGS WHERE UNITED STATES HAS TITLE TO PROPERTY.**~~

~~(a) ACTION TO QUIET TITLE.—Section 7402 (relating to jurisdiction of district courts) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:~~

~~"(e) TO QUIET TITLE.—The United States district courts shall have jurisdiction of any action brought to quiet title to property if the title claimed by the United States to such property was derived from enforcement of a lien under this title."~~

~~(b) FILING OF ACTION.—Section 7403(a) (relating to filing action to enforce lien or to subject property to payment of tax) is amended—~~

~~(1) By striking out "In any case" and inserting in lieu thereof:~~

~~"(1) IN GENERAL.—In any case"; and~~

~~(2) By inserting at the end thereof the following new paragraph:~~

~~"(2) RIGHTS UNDER SECTION 3506.—The At-~~

~~torney General or his delegate, at the request of the Secretary or his delegate, may direct a civil action be filed in a district court of the United States, or in any State court having jurisdiction of the property subject to such rights, to enforce the rights of the United States under section 3506."~~

~~(c) SALE BIDS.—Section 7403 (c) (relating to adjudication and decree) is amended by adding at the end thereof the following new sentence: "If property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of such lien with expenses of sale, as the Secretary or his delegate directs."~~

~~**SEC. 108. INTERVENTION BY UNITED STATES.**~~

~~Section 7424 (relating to civil action to clear title to property) is amended to read as follows:~~

~~**"SEC. 7424. INTERVENTION.**~~

~~"If the United States is not a party to a civil action or suit, the United States may intervene in such action or suit to assert any lien arising under this title on the property which is the subject of such action or suit. The provisions of section 2410 of title 28 of the United States Code (except subsection (b)) and of section 1444 of title 28 of the United States Code shall apply in any case in which the United States intervenes as if the United States had originally been~~

~~named a defendant in such action or suit. In any case in which the application of the United States to intervene is denied, the adjudication in such civil action or suit shall have no effect upon such interest or lien."~~

~~**SEC. 109. DISCHARGE OF LIENS HELD BY UNITED STATES.**~~

~~Subchapter B of chapter 76 (relating to proceedings by taxpayers) is amended by redesignating section 7425 as section 7427 and by inserting after section 7424 the following new section:~~

~~**"SEC. 7425. DISCHARGE OF LIENS.**~~

~~"(a) JUDICIAL PROCEEDINGS.—If the United States is not joined as a party, a judgment in any civil action or suit described in subsection (a) of section 2410 of title 28 of the United States Code, or a judicial sale pursuant to such a judgment, with respect to property in which the United States has or claims a lien under the provisions of this title—~~

~~"(1) shall be made subject to and without disturbing the lien of the United States, if notice of such lien has been filed in the place provided by law for such filing at the time such action or suit is commenced;~~

~~"(2) shall have the same effect with respect to the discharge or divestment of such lien of the United States as may be provided with respect to such matters by the local law of the place where such property is situated, if no notice of such lien has been filed in the place pro-~~

~~vided by law for such filing at the time such action or suit is commenced or if the law makes no provision for such filing.~~

~~If a judicial sale of property pursuant to a judgment in any civil action or suit to which the United States is not a party discharges a lien of the United States arising under the provisions of this title, the United States may claim, with the same priority as its lien had against the property sold, the proceeds (exclusive of costs) of such at any time before the distribution of such proceeds is ordered.~~

~~“(b) NONJUDICIAL SALES.—A sale of property in which the United States has or claims a lien, or a title derived from enforcement of a lien, under the provisions of this title, pursuant to an instrument creating a lien on such property—~~

~~“(1) shall, except as otherwise provided, be made subject to and without disturbing such lien or title, if notice of such lien or such title was filed or recorded in the place provided by law for such filing or recording more than 30 days before such sale and the United States is not given notice of such sale in the manner prescribed in subsection (c) (1);~~

~~“(2) shall have the same effect with respect to the discharge or divestment of such lien or such title of the United States, as may be provided with respect to~~

~~such matters by the local law of the place where such property is situated, if—~~

~~"(A) notice of such lien or such title was not filed or recorded in the place provided by law for such filing more than 30 days before such sale,~~

~~"(B) the law makes no provision for such filing, or~~

~~"(C) notice of such sale is given in the manner prescribed in subsection (c) (1).~~

~~"(c) Special Rules.—~~

~~"(1) Notice of nonjudicial sale.—Notice of a nonjudicial sale shall be given to the district director of internal revenue or his delegate for the district in which such sale is conducted, in writing, by registered or certified mail or by personal service, not less than 25 days prior to such sale. Such notice shall set forth with particularity the time, place, and terms of such sale, the nature of the interest or lien of the United States, the name and address of the delinquent taxpayer, the office of the district director of internal revenue who caused notice of a lien or instrument evidencing an interest to be filed against the property to be sold, and the date and place such notice of lien or such instrument was filed.~~

~~"(2) Consent to sale.—Notwithstanding subsec-~~

~~tion (b), a sale of property (pursuant to an instrument creating a lien on such property) in which the United States has or claims a lien, or a title derived from enforcement of a lien, under the provisions of this title shall discharge or divest such property of such lien or such title if the United States consents to the sale of such property free of such lien or title and the proceeds of such sale are paid to the parties legally entitled thereto.~~

~~"(d) REDEMPTION BY UNITED STATES.—~~

~~"(1) RIGHT TO REDEEM.—In the case of a sale of real property to which subsection (b) applies to satisfy a lien prior to that of the United States, the Secretary or his delegate may redeem such property within 120 days from the date of such sale.~~

~~"(2) AMOUNT TO BE PAID.—In any case in which the United States redeems real property pursuant to paragraph (1), the amount to be paid for such property shall be the amount prescribed by subsection (d) of section 2410 of title 28 of the United States Code.~~

~~"(3) CERTIFICATE OF REDEMPTION.—~~

~~"(A) IN GENERAL.—In any case in which real property is redeemed by the United States pursuant to this subsection, the Secretary or his delegate shall apply to the officer designated by local law, if any,~~

~~for the documents necessary to evidence the fact of redemption and to record title to such property in the name of the United States. If no such officer is designated by local law or if such officer fails to issue such documents, the Secretary or his delegate shall execute a certificate of redemption therefor.~~

~~"(B) FILING.—The Secretary or his delegate shall, without delay, cause such documents or certificate to be duly recorded in the proper registry of deeds. If the State in which the real property redeemed by the United States is situated has not by law designated an office in which such certificate may be recorded, the Secretary or his delegate shall file such certificate in the office of the clerk of the United States district court for the judicial district in which such property is situated.~~

~~"(C) EFFECT.—A certificate of redemption executed by the Secretary or his delegate shall constitute prima facie evidence of the regularity of such redemption and shall, when recorded, transfer to the United States all the rights, title, and interest in and to such property acquired by the person from whom the United States redeems such property by virtue of the sale of such property."~~

~~SEC. 110. PROCEEDINGS BY THIRD PARTIES AGAINST THE UNITED STATES.~~

~~(a) ACTIONS BY THIRD PARTIES.—Subchapter B of chapter 76 (relating to proceedings by taxpayers) is amended by inserting after section 7425 (as added by section 109 of this Act) the following new section:~~

~~"SEC. 7426. CIVIL ACTIONS BY PERSONS OTHER THAN TAXPAYERS.~~

~~"(a) ACTIONS PERMITTED.—Any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on property may bring a civil action against the United States in a district court of the United States if—~~

~~"(1) a levy has been made on such property and such levy would irreparably injure such interest or lien, or~~

~~"(2) such property has been sold pursuant to a levy or an agreement described in section 6325(b)(3) (relating to substitution of proceeds of sale for property) and such person's interest or lien has been transferred to the proceeds of such sale.~~

~~Paragraph (1) shall apply whether or not such property has been surrendered to the Secretary or his delegate and whether~~

~~or not such property has been sold by the Secretary or his delegate.~~

~~"(b) ADJUDICATION.—The district court shall have jurisdiction to grant only such of the following forms of relief as may be appropriate in the circumstances:~~

~~"(1) INJUNCTION.—If a levy or sale would irreparably injure rights in property which the court determines to be superior to rights of the United States in such property, the court may grant an injunction to prohibit the enforcement of such levy or to prohibit such sale.~~

~~"(2) RECOVERY OF PROPERTY.—If the court determines that such property has been wrongfully levied upon, the court may—~~

~~"(A) order the return of specific property (other than money) if the United States is in possession of such property;~~

~~"(B) grant a judgment for the amount of money levied upon; or~~

~~"(C) grant a judgment for an amount not exceeding the amount actually received by the United States from the sale of such property.~~

~~"(3) SURPLUS PROCEEDS.—If the court determines that the interest or lien of any party to an action under this section was transferred to the proceeds of a~~

~~sale of such property, the court may grant a judgment in an amount equal to all or any part of the amount of the surplus proceeds of such sale.~~

~~"(4) SUBSTITUTED SALE PROCEEDS.—If the Secretary or his delegate has entered into an agreement pursuant to section 6325(b)(3) (relating to substitution of proceeds of sale), the court may grant a judgment in an amount equal to all or any part of the amount held as a fund pursuant to such agreement.~~

~~"(c) VALIDITY OF ASSESSMENT.—For purposes of an adjudication under this section, the assessment of tax upon which the interest or lien of the United States is based shall be conclusively presumed to be valid.~~

~~"(d) LIMITATION ON RIGHTS OF ACTION.—No action other than an action under this section may be maintained against any officer or employee of the United States (or former officer or employee) or his personal representative with respect to any acts or threatened acts for which an action could be maintained under this section.~~

~~"(e) MISJOINDER.—If an action under this section, which could be brought against the United States, is improperly brought against any officer or employee of the United States (or former officer or employee) or his personal representative, the court shall order, upon such terms~~

~~as are just, that the pleadings be amended to substitute the United States as a party for such officer or employee as of the time such action was commenced upon proper service of process on the United States.~~

~~"(f) PROVISION INAPPLICABLE.—The provisions of section 7422(a) (relating to prohibition of suit prior to filing claim for refund) shall not apply to actions under this section.~~

~~"(g) INTEREST.—Interest shall be allowed at the rate of 6 percent per annum—~~

~~"(1) in the case of a judgment pursuant to subsection (b)(2)(B), from the date the Secretary or his delegate receives the property wrongfully levied upon to the date of payment of such judgment;~~

~~"(2) in the case of a judgment pursuant to subsection (b)(2)(C), from the date of the sale of the property wrongfully levied upon to the date of payment of such judgment.~~

~~"(h) CROSS REFERENCES.—~~

~~"(1) For period of limitations, see section 6532(c)."~~

~~(b) PERIOD OF LIMITATIONS ON SUIT.—Section 6532 (relating to periods of limitation on suits) is amended by adding at the end thereof the following new subsection:~~

"~~(c) SUITS BY PERSONS OTHER THAN TAXPAYERS.—A civil action under section 7426 shall be allowed only if~~

~~such action is begun before the expiration of 9 months from the date of the levy giving rise to such action. Any person who fails to begin an action within such period for relief which could be obtained against the United States under section 7426 shall be barred from obtaining such relief against the United States or any officer or employee of the United States (or former officer or employee) or his personal representative."~~

~~(c) PROHIBITION OF SUITS TO RESTRAIN ASSESSMENT OR COLLECTION.—Section 7421 (a) (relating to prohibition of suits to restrain assessment or collection of tax) is amended to read as follows:~~

~~"(a) TAX.—Except as provided in sections 6212 (a) and (c), 6213 (a), and 7426 (b) (1), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed."~~

~~(d) TECHNICAL AMENDMENTS.—~~

~~(1) The heading of subchapter B of chapter 76 is amended to read as follows: "**Proceedings by Taxpayers and Third Parties**";~~

~~(2) The table of sections for subchapter B of chapter 76 is amended by striking out~~

~~"Sec. 7424. Civil action to clear title to property.~~
~~"Sec. 7425. Cross references."~~

~~and inserting in lieu thereof~~

~~"Sec. 7424. Intervention.~~
~~"Sec. 7425. Discharge of liens.~~
~~"Sec. 7426. Civil actions by persons other than taxpayers.~~
~~"Sec. 7427. Cross references."~~

~~(3) The table of subchapters for chapter 76 of subtitle F is amended by striking out~~

~~"Subchapter B. Proceedings by taxpayers."~~

~~and inserting in lieu thereof~~

~~"Subchapter B. Proceedings by taxpayers and third parties."~~

~~**SEC. 111. SALE OF PROPERTY ACQUIRED BY UNITED STATES.**~~

~~(a) Personal Property Acquired.—Section 7505 (a) (relating to sale of personal property purchased by the United States) is amended by striking out "purchased by the United States under the authority of section 6335(e) (relating to purchase for the account of the United States of property sold under levy)" and inserting in lieu thereof "acquired by the United States in payment of or as security for debts arising under the internal revenue laws".~~

~~(b) Real Property Redeemed.—Section 7506(a) (relating to person charged with administration of real estate acquired by the United States) is amended by striking out "for the payment of such debts," and inserting in lieu thereof "for the payment of such debts, or which has been redeemed by the United States,".~~

~~(c) TECHNICAL AMENDMENTS.—~~

~~(1) The heading of section 7505 is amended by striking out "PURCHASED" and inserting in lieu thereof "ACQUIRED";~~

~~(2) The table of sections for chapter 77 of subtitle F is amended by striking out~~

~~"Sec. 7505. Sale of personal property purchased by the United States."~~

~~and inserting in lieu thereof~~

~~"Sec. 7505. Sale of personal property acquired by the United States."~~

~~**SEC. 112. FUND FOR REDEMPTION OF REAL PROPERTY BY UNITED STATES.**~~

~~(a) CREATION OF FUND FOR REDEMPTION OF REAL PROPERTY.—Subchapter A of chapter 80 (relating to application of internal revenue laws) is amended by adding at the end thereof the following new section:~~

~~**"SEC. 7810. REVOLVING FUND FOR REDEMPTION OF REAL PROPERTY.**~~

~~"(a) ESTABLISHMENT OF FUND.—There is established a revolving fund of $1,000,000, under the control of the Secretary or his delegate, which shall be available without fiscal year limitation for all expenses necessary for the redemption of real property as provided in section 7425(d) and section 2410 of title 28 of the United States Code.~~

~~"(b) Reimbursement of Fund.—The fund shall be reimbursed from the proceeds of a subsequent sale of real property redeemed by the United States in an amount equal to the amount expended for such redemption. Any surplus proceeds from such sale shall be deposited in the Treasury as provided in section 7809(a).~~

~~"(c) System of Accounts.—The Secretary or his delegate shall maintain an adequate system of accounts for such fund and prepare annual reports on the basis of such accounts."~~

~~(b) Deposit of Money Received.—The first sentence of section 7809(a) (relating to deposit of collections) is amended by striking out "and 7654" and inserting in lieu thereof "7654 and 7810".~~

~~(c) Technical Amendment.—The table of sections of subchapter A of chapter 80 is amended by adding at the end thereof the following:~~

~~"Sec. 7810. Revolving fund for redemption of real property."~~

~~**SEC. 113. EFFECTIVE DATE.**~~

~~(a) General Rule.—Except as otherwise provided, the amendments made by this title shall apply after the date of enactment of this Act, regardless of when a lien or a title of the United States arose or when the lien or interest of any other person was acquired.~~

~~(b) Exceptions.—The amendments made by this title shall not apply in any case—~~

~~(1) in which a lien or a title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before the date of enactment of this Act; or~~

~~(2) in which such amendments would—~~

~~(A) impair a priority enjoyed by any person (other than the United States) holding a lien or interest prior to the date of enactment of this Act;~~

~~(B) operate to increase the liability of any such person; or~~

~~(C) shorten the time for bringing suit with respect to transactions occurring before the date of enactment of this Act.~~

~~(c) Certificates and Bonds for Withheld Taxes.—~~

~~(1) The amendments made by section 105(a) (relating to effect on third parties) shall apply only with respect to wages paid and contracts entered into after January 1, 1965.~~

~~(2) The amendments made by section 105(c) (relating to performance bonds of contractors for public~~

~~buildings or works) shall apply to contracts entered into pursuant to invitations for bids issued after January 1, 1965.~~

~~(d) Civil Action To Clear Title to Property.—If, before the date of enactment of this Act, any person has commenced a civil action to clear title to property pursuant to section 7424 of the Internal Revenue Code of 1954 as in effect immediately before the enactment of this Act, such action shall be determined in accordance with section 7424 of such Code as in effect immediately before the enactment of this Act.~~

[TITLE II—CONSENT OF UNITED STATES TO BE SUED IN ACTIONS AFFECTING PROPERTY IN WHICH IT HAS A LIEN OR INTEREST]

~~SEC. 201. JOINDER OF UNITED STATES IN CERTAIN PROCEEDINGS.~~

~~Section 2410 of title 28 of the United States Code is amended by redesignating subsection (d) as subsection (e) and by striking out subsections (a), (b), and (c) and inserting in lieu thereof the following new subsections:~~

~~"(a) Under the conditions prescribed in this section and section 1444 of this title for the protection of the United States, the United States may be named a party in any civil~~

~~action or suit in any district court or in any State court having jurisdiction of the subject matter~~

~~"(1) to quiet title to,~~

~~"(2) to foreclose a mortgage or other lien upon,~~

~~"(3) to partition,~~

~~"(4) to condemn, or~~

~~"(5) of interpleader with respect to real or personal property on which the United States has or claims a mortgage or other lien.~~

~~"(b) The complaint or pleading shall set forth with particularity the nature of the lien of the United States. In actions or suits involving liens arising under the internal revenue law, the complaint or pleading shall include the name of the taxpayer whose liability created the lien and, if a notice of the tax lien was filed, the identity of the internal revenue office which filed the notice, and date and place it was filed. In actions in the State courts service upon the United States shall be made by serving the process of the court with a copy of the complaint upon the United States attorney for the district in which the action is brought or upon an assistant United States attorney or clerical employee designated by the United States attorney in writing filed with the clerk of the court in which the action is brought and by sending copies of the process and complaint, by registered~~

~~mail, or by certified mail, to the Attorney General of the United States at Washington, District of Columbia. In such actions the United States may appear and answer, plead or demur within sixty days after such service or such further time as the court may allow.~~

~~"(c) A judgment or decree in such action or suit shall have the same effect respecting the discharge of the property from the mortgage or other lien held by the United States as may be provided with respect to such matters by the local law of the place where the court is situated. However, an action to foreclose a mortgage or other lien, naming the United States as a party under this section, must seek judicial sale. A sale to satisfy a lien inferior to one of the United States shall be made subject to and without disturbing the lien of the United States, unless the United States consents that the property may be sold free of its lien and the proceeds divided as the parties may be entitled. Where a sale of real estate is made to satisfy a lien prior to that of the United States, the United States shall have one year from the date of sale within which to redeem, except that with respect to a lien arising under the internal revenue law the period shall be 120 days or the period allowable for redemption under State law, whichever is longer, and in any case in which, under the provisions of subsection (k) of section 1701 of title 12 and subsection (d) of section~~

~~1820 of title 38 of the United States Code, the right to redeem does not arise, there shall be no right of redemption. In any case where the debt owing the United States is due, the United States may ask, by way of affirmative relief, for the foreclosure of its own lien and where property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of its claim with expenses of sale, as may be directed by the head (or his delegate) of the department or agency of the United States which has charge of the administration of the laws in respect of which the claim of the United States arises.~~

~~"(d) In any case in which the United States redeems real property, the amount to be paid for such property shall be the sum of—~~

~~"(1) the actual amount paid by the purchaser at such sale which in the case of a purchaser who is the holder of the lien being foreclosed shall include the amount of the obligation secured by such lien,~~

~~"(2) interest on the amount paid (as determined under paragraph (1)) at 6 percent per annum from the date of such sale, and~~

~~"(3) the amount (if any) equal to the excess of (A) the expenses necessarily incurred in connection~~

~~with such property, over (B) the income from such property, and (C) a reasonable rental value of such property, to the extent such property is used by the purchaser."~~

~~SEC. 202. JURISDICTION AND VENUE IN CERTAIN ACTIONS AGAINST UNITED STATES.~~

~~(a) JURISDICTION IN PROCEEDINGS BROUGHT BY THIRD PARTIES.—Section 1346 of title 28 of the United States Code is amended by adding at the end thereof the following new subsection:~~

~~"(e) The district courts shall have original jurisdiction of any civil action against the United States provided in section 7426 of the Internal Revenue Code of 1954."~~

~~(b) VENUE IN PROCEEDINGS BROUGHT BY THIRD PARTIES.—Section 1402 of title 28 of the United States Code is amended by adding at the end thereof the following new subsection:~~

~~"(c) Any civil action against the United States under subsection (e) of section 1346 of this title may be prosecuted only in the judicial district where the property is situated at the time of levy, or if no levey is made, in the judicial district in which the event occurred which gave rise to the cause of action."~~

~~SEC. 203. TIME FOR REMOVAL OF ACTIONS AGAINST UNITED STATES FROM STATE COURTS.~~

~~Section 1446(b) of title 28 of the United States Code is amended by adding at the end thereof the following new sentence: "In any action against the United States described in section 1444, a petition for removal may be filed within sixty days after receipt by the United States of a pleading, motion, order, or other paper from which it may first be ascertained that a particular issue is raised concerning the rights of the United States, which issue had not previously been raised in such action."~~

~~SEC. 204. EFFECTIVE DATE.~~

~~(a) GENERAL RULE.—Except as otherwise provided, the amendments made by this title shall apply after the date of the enactment of this Act.~~

~~(b) TIME FOR REMOVAL.—The amendments made by section 203 of this title (relating to time for removal) shall apply only with respect to cases in which the first pleading, motion, order, or other paper raising an issue concerning a right of the United States is served upon the United States after the enactment of this Act.~~

SECTION 1. SHORT TITLE, ETC.

(a) SHORT TITLE.—This Act may be cited as the "Federal Tax Lien Act of 1966".

(b) Amendment of 1954 Code.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

TITLE I—PRIORITY AND EFFECT OF TAX LIENS AND LEVIES

SEC. 101. PRIORITY OF LIENS.

(a) Amendment of Section 6323.—Section 6323 (relating to validity of tax liens against mortgagees, pledgees, purchasers, and judgment creditors) is amended to read as follows:

"SEC. 6323. VALIDITY AND PRIORITY AGAINST CERTAIN PERSONS.

"(a) Purchasers, Holders of Security Interests, Mechanic's Lienors, and Judgment Lien Creditors.—The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary or his delegate.

"(b) Protection for Certain Interests Even Though Notice Filed.—Even though notice of a lien im-

posed by section 6321 has been filed, such lien shall not be valid—

"(1) Securities.—With respect to a security (as defined in subsection (h)(4))—

"(A) as against a purchaser of such security who at the time of purchase did not have actual notice or knowledge of the existence of such lien; and

"(B) as against a holder of a security interest in such security who, at the time such interest came into existence, did not have actual notice or knowledge of the existence of such lien.

"(2) Motor vehicles.—With respect to a motor vehicle (as defined in subsection (h)(3)), as against a purchaser of such motor vehicle, if—

"(A) at the time of the purchase such purchaser did not have actual notice or knowledge of the existence of such lien, and

"(B) before the purchaser obtains such notice or knowledge, he has acquired possession of such motor vehicle and has not thereafter relinquished possession of such motor vehicle to the seller or his agent.

"(3) Personal property purchased at retail.—With respect to tangible personal property pur-

chased at retail, as against a purchaser in the ordinary course of the seller's trade or business, unless at the time of such purchase such purchaser intends such purchase to (or knows such purchase will) hinder, evade, or defeat the collection of any tax under this title.

"(4) PERSONAL PROPERTY PURCHASED IN CASUAL SALE.—*With respect to household goods, personal effects, or other tangible personal property described in section 6334(a) purchased (not for resale) in a casual sale for less than $250, as against the purchaser, but only if such purchaser does not have actual notice or knowledge (A) of the existence of such lien, or (B) that this sale is one of a series of sales.*

"(5) PERSONAL PROPERTY SUBJECT TO POSSESSORY LIEN.—*With respect to tangible personal property subject to a lien under local law securing the reasonable price of the repair or improvement of such property, as against a holder of such a lien, if such holder is, and has been, continuously in possession of such property from the time such lien arose.*

"(6) REAL PROPERTY TAX AND SPECIAL ASSESSMENT LIENS.—*With respect to real property, as against a holder of a lien upon such property, if such lien is entitled under local law to priority over security interests*

in such property which are prior in time, and such lien secures payment of—

"(A) a tax of general application levied by any taxing authority based upon the value of such property;

"(B) a special assessment imposed directly upon such property by any taxing authority, if such assessment is imposed for the purpose of defraying the cost of any public improvement; or

"(C) charges for utilities or public services furnished to such property by the United States, a State or political subdivision thereof, or an instrumentality of any one or more of the foregoing.

"(7) RESIDENTIAL PROPERTY SUBJECT TO A MECHANIC'S LIEN FOR CERTAIN REPAIRS AND IMPROVEMENTS.—With respect to real property subject to a lien for repair or improvement of a personal residence (containing not more than four dwelling units) occupied by the owner of such residence, as against a mechanic's lienor, but only if the contract price on the contract with the owner is not more than $1,000.

"(8) ATTORNEYS' LIENS.—With respect to a judgment or other amount in settlement of a claim or of a

cause of action, as against an attorney who, under local law, holds a lien upon or a contract enforcible against such judgment or amount, to the extent of his reasonable compensation for obtaining such judgment or procuring such settlement, except that this paragraph shall not apply to any judgment or amount in settlement of a claim or of a cause of action against the United States to the extent that the United States offsets such judgment or amount against any liability of the taxpayer to the United States.

"(9) Certain insurance contracts.—With respect to a life insurance, endowment, or annuity contract, as against the organization which is the insurer under such contract, at any time—

"(A) before such organization had actual notice or knowledge of the existence of such lien;

"(B) after such organization had such notice or knowledge, with respect to advances required to be made automatically to maintain such contract in force under an agreement entered into before such organization had such notice or knowledge; or

"(C) after satisfaction of a levy pursuant to section 6332(b), unless and until the Secretary or his delegate delivers to such organization a notice, executed after the date of such satisfaction, of the existence of such lien.

"(10) Passbook loans.—With respect to a savings deposit, share, or other account, evidenced by a passbook, with an institution described in section 581 or 591, to the extent of any loan made by such institution without actual notice or knowledge of the existence of such lien, as against such institution, if such loan is secured by such account and if such institution has been continuously in possession of such passbook from the time the loan is made.

"(c) Protection for Certain Commercial Transactions Financing Agreements, etc.—

"(1) In general.—To the extent provided in this subsection, even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing but which—

"(A) is in qualified property covered by the terms of a written agreement entered into before tax lien filing and constituting—

"(i) a commercial transactions financing agreement,

"(ii) a real property construction or improvement financing agreement, or

"(iii) an obligatory disbursement agreement, and

"(B) is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

"(2) COMMERCIAL TRANSACTIONS FINANCING AGREEMENT.—For purposes of this subsection—

"(A) DEFINITION.—The term 'commercial transactions financing agreement' means an agreement (entered into by a person in the course of his trade or business)—

"(i) to make loans to the taxpayer to be secured by commercial financing security acquired by the taxpayer in the ordinary course of his trade or business, or

"(ii) to purchase commercial financing security (other than inventory) acquired by the taxpayer in the ordinary course of his trade or business;

but such an agreement shall be treated as coming within the term only to the extent that such loan or purchase is made before the 46th day after the date of tax lien filing or (if earlier) before the lender or purchaser had actual notice or knowledge of such tax lien filing.

"(B) LIMITATION ON QUALIFIED PROPERTY.—The term 'qualified property', when used with respect

to a commercial transactions financing agreement, includes only commercial financing security acquired by the taxpayer before the 46th day after the date of tax lien filing.

"(C) COMMERCIAL FINANCING SECURITY DEFINED.—The term 'commercial financing security' means (i) paper of a kind ordinarily arising in commercial transactions, (ii) accounts receivable, (iii) mortgages on real property, and (iv) inventory.

"(D) PURCHASER TREATED AS ACQUIRING SECURITY INTEREST.—A person who satisfies subparagraph (A) by reason of clause (ii) thereof shall be treated as having acquired a security interest in commercial financing security.

"(3) REAL PROPERTY CONSTRUCTION OR IMPROVEMENT FINANCING AGREEMENT.—For purposes of this subsection—

"(A) DEFINITION.—The term 'real property construction or improvement financing agreement' means an agreement to make cash disbursements to finance—

"(i) the construction or improvement of real property,

"(ii) a contract to construct or improve real property, or

"(iii) the raising or harvesting of a farm crop or the raising of livestock or other animals. For purposes of clause (iii), the furnishing of goods and services shall be treated as the disbursement of cash.

"(B) Limitation on qualified property.—The term 'qualified property', when used with respect to a real property construction or improvement financing agreement, includes only—

"(i) in the case of subparagraph (A)(i), the real property with respect to which the construction or improvement has been or is to be made,

"(ii) in the case of subparagraph (A)(ii), the proceeds of the contract described therein, and

"(iii) in the case of subparagraph (A)(iii), property subject to the lien imposed by section 6321 at the time of tax lien filing and the crop or the livestock or other animals referred to in subparagraph (A)(iii).

"(4) Obligatory disbursement agreement.—For purposes of this subsection—

"(A) Definition.—The term 'obligatory disbursement agreement' means an agreement (entered

into by a person in the course of his trade or business) to make disbursements, but such an agreement shall be treated as coming within the term only to the extent of disbursements which are required to be made by reason of the intervention of the rights of a person other than the taxpayer.

"*(B)* LIMITATION ON QUALIFIED PROPERTY.—*The term 'qualified property', when used with respect to an obligatory disbursement agreement, means property subject to the lien imposed by section 6321 at the time of tax lien filing and (to the extent that the acquisition is directly traceable to the disbursements referred to in subparagraph (A)) property acquired by the taxpayer after tax lien filing.*

"*(C)* SPECIAL RULES FOR SURETY AGREEMENTS.—*Where the obligatory disbursement agreement is an agreement ensuring the performance of a contract between the taxpayer and another person—*

"*(i) the term 'qualified property' shall be treated as also including the proceeds of the contract the performance of which was ensured, and*

"*(ii) if the contract the performance of*

which was ensured was a contract to construct or improve real property, to produce goods, or to furnish services, the term 'qualified property' shall be treated as also including any tangible personal property used by the taxpayer in the performance of such ensured contract.

"(d) 45-Day Period for Making Disbursements.—Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing by reason of disbursements made before the 46th day after the date of tax lien filing, or (if earlier) before the person making such disbursements had actual notice or knowledge of tax lien filing, but only if such security interest—

"(1) is in property (A) subject, at the time of tax lien filing, to the lien imposed by section 6321, and (B) covered by the terms of a written agreement entered into before tax lien filing, and

"(2) is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

"(e) Priority of Interest and Expenses.—If the lien imposed by section 6321 is not valid as against a lien or security interest, the priority of such lien or security interest shall extend to—

"(1) any interest or carrying charges upon the obligation secured,

"(2) the reasonable charges and expenses of an indenture trustee or agent holding the security interest for the benefit of the holder of the security interest,

"(3) the reasonable expenses, including reasonable compensation for attorneys, actually incurred in collecting or enforcing the obligation secured,

"(4) the reasonable costs of insuring, preserving, or repairing the property to which the lien or security interest relates,

"(5) the reasonable costs of insuring payment of the obligation secured, and

"(6) amounts paid to satisfy any lien on the property to which the lien or security interest relates, but only if the lien so satisfied is entitled to priority over the lien imposed by section 6321,

to the extent that, under local law, any such item has the same priority as the lien or security interest to which it relates.

"(f) PLACE FOR FILING NOTICE; FORM.—The notice referred to in subsection (a) shall be filed—

"(1) UNDER STATE LAWS.—In the office designated by the law of the State in which the property subject to the lien is situated, whenever the State has by law

designated an office within the State for the filing of such notice; or

"(2) WITH CLERK OF DISTRICT COURT.—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State has not by law designated an office within the State for the filing of such notice; or

"(3) WITH RECORDER OF DEEDS OF THE DISTRICT OF COLUMBIA.—In the office of the Recorder of Deeds of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

If the notice filed pursuant to paragraph (1) is in such form as would be valid if filed with the clerk of the United States district court pursuant to paragraph (2), such notice shall be valid notwithstanding any law of the State regarding the form or content of a notice of lien.

"(g) REFILING OF NOTICE.—

"(1) IN GENERAL.—For purposes of this section, unless notice of lien is refiled (in the office in which the prior notice was filed) during the required refiling period, such notice of lien shall be treated as filed on the date on which it is filed (in accordance with subsection (f)) after the expiration of such refiling period.

"(2) REQUIRED REFILING PERIOD.—In the case of

any notice of lien, the term 'required refiling period' means—

"(A) the one-year period ending 30 days after the expiration of 6 years after the date of the assessment of the tax, and

"(B) the one-year period ending with the expiration of 6 years after the close of the preceding required refiling period for such notice of lien.

"(3) TRANSITIONAL RULE.—Notwithstanding paragraph (2), if the assessment of the tax was made before January 1, 1962, the first required refiling period shall be the calendar year 1967.

"(h) DEFINITIONS.—For purposes of this section and section 6324—

"(1) SECURITY INTEREST.—The term 'security interest' means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time (A) if, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien arising out of an unsecured obligation, and (B) to the extent that, at such time, the holder has parted with money or money's worth.

"(2) MECHANIC'S LIENOR.—The term 'mechanic's lienor' means any person who under local law has a lien on real property (or on the proceeds of a contract relating to real property) for services, labor, or materials furnished in connection with the construction or improvement of such property. For purposes of the preceding sentence, a person has a lien on the earliest date such lien becomes valid under local law against subsequent purchasers without actual notice, but not before he begins to furnish the services, labor, or materials.

"(3) MOTOR VEHICLE.—The term 'motor vehicle' means a self-propelled vehicle which is registered for highway use under the laws of any State or foreign country.

"(4) SECURITY.—The term 'security' means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by a corporation or a government or political subdivision thereof, with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

"(5) TAX LIEN FILING.—The term 'tax lien filing'

means the filing of notice (referred to in subsection(a)) of the lien imposed by section 6321.

"(6) PURCHASER.—The term 'purchaser' means a person who, for adequate and full consideration in money or money's worth, acquires an interest (other than a lien or security interest) in property which is valid under local law against subsequent purchasers without actual notice. In applying the preceding sentence for purposes of subsection (a) of this section, and for purposes of section 6324—

"(A) a lease of property,

"(B) a written executory contract to purchase or lease property,

"(C) an option to purchase or lease property or any interest therein, or

"(D) an option to renew or extend a lease of property,

which is not a lien or security interest shall be treated as an interest in property.

"(i) SPECIAL RULES.—

"(1) ACTUAL NOTICE OR KNOWLEDGE.—For purposes of this subchapter, an organization shall be deemed for purposes of a particular transaction to have actual notice or knowledge of any fact from the time such fact is brought to the attention of the individual conducting

such transaction, and in any event from the time such fact would have been brought to such individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

"(2) SUBROGATION.—Where, under local law, one person is subrogated to the rights of another with respect to a lien or interest, such person shall be subrogated to such rights for purposes of any lien imposed by section 6321 or 6324.

"(3) DISCLOSURE OF AMOUNT OF OUTSTANDING LIEN.—If a notice of lien has been filed pursuant to subsection (f), the Secretary or his delegate is authorized to provide by regulations the extent to which, and the conditions under which, information as to the amount of the outstanding obligation secured by the lien may be disclosed."

(b) Clerical Amendments.—

(1) The table of sections for subchapter C of chapter 64 is amended by striking out

"Sec. 6323. Validity against mortgagees, pledgees, purchasers, and judgment creditors."

and inserting in lieu thereof

"Sec. 6323. Validity and priority against certain persons."

(2) Section 545(b)(9) is amended by striking out "section 6323(a) (1), (2), or (3)" and inserting in lieu thereof "section 6323(f)".

SEC. 102. SPECIAL LIENS FOR ESTATE AND GIFT TAXES.

Section 6324 (relating to special liens for estate and gift taxes) is amended to read as follows:

"SEC. 6324. SPECIAL LIENS FOR ESTATE AND GIFT TAXES.

"(a) Liens for Estate Tax.—Except as otherwise provided in subsection (c)—

"(1) Upon gross estate.—Unless the estate tax imposed by chapter 11 is sooner paid in full, or becomes unenforceable by reason of lapse of time, it shall be a lien upon the gross estate of the decedent for 10 years from the date of death, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien.

"(2) LIABILITY OF TRANSFEREES AND OTHERS.—If the estate tax imposed by chapter 11 is not paid when due, then the spouse, transferee, trustee (except the trustee of an employees' trust which meets the requirements of section 401(a)), surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042, inclusive, to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax. Any part of such property transferred by (or transferred by a transferee of) such spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary, to a purchaser or holder of a security interest shall be divested of the lien provided in paragraph (1) and a like lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary, or transferee of any such person, except any part transferred to a purchaser or a holder of a security interest.

"(3) CONTINUANCE AFTER DISCHARGE OF EXECUTOR.—The provisions of section 2204 (relating to discharge of executor from personal liability) shall not operate as a release of any part of the gross estate from

the lien for any deficiency that may thereafter be determined to be due, unless such part of the gross estate (or any interest therein) has been transferred to a purchaser or a holder of a security interest, in which case such part (or such interest) shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser or holder of a security interest, by the heirs, legatees, devisees, or distributees.

"(b) LIEN FOR GIFT TAX.—Except as otherwise provided in subsection (c), unless the gift tax imposed by chapter 12 is sooner paid in full or becomes unenforceable by reason of lapse of time, such tax shall be a lien upon all gifts made during the calendar year, for 10 years from the date the gifts are made. If the tax is not paid when due, the donee of any gift shall be personally liable for such tax to the extent of the value of such gift. Any part of the property comprised in the gift transferred by the donee (or by a transferee of the donee) to a purchaser or holder of a security interest shall be divested of the lien imposed by this subsection and such lien, to the extent of the value of such gift, shall attach to all the property (including after-acquired property) of the donee (or the transferee) except any part transferred to a purchaser or holder of a security interest.

"(c) Exceptions.—

"(1) The lien imposed by subsection (a) or (b) shall not be valid as against a mechanic's lienor and, subject to the conditions provided by section 6323(b) (relating to protection for certain interests even though notice filed), shall not be valid with respect to any lien or interest described in section 6323(b).

"(2) If a lien imposed by subsection (a) or (b) is not valid as against a lien or security interest, the priority of such lien or security interest shall extend to any item described in section 6323(e) (relating to priority of interest and expenses) to the extent that, under local law, such item has the same priority as the lien or security interest to which it relates."

SEC. 103. CERTIFICATES RELATING TO LIENS.

(a) Amendment of Section 6325.—Section 6325 (relating to release of lien or partial discharge of property) is amended to read as follows:

"SEC. 6325. RELEASE OF LIEN OR DISCHARGE OF PROPERTY.

"(a) Release of Lien.—Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of release of any lien imposed with respect to any internal revenue tax if—

"(1) LIABILITY SATISFIED OR UNENFORCEABLE.—The Secretary or his delegate finds that the liability for the amount assessed, together with all interest in respect thereof, has been fully satisfied or has become legally unenforceable; or

"(2) BOND ACCEPTED.—There is furnished to the Secretary or his delegate and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified by such regulations.

"(b) DISCHARGE OF PROPERTY.—

"(1) PROPERTY DOUBLE THE AMOUNT OF THE LIABILITY.—Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to any lien imposed under this chapter if the Secretary or his delegate finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the unsatisfied liability secured by such lien and the amount

of all other liens upon such property which have priority over such lien.

"(2) Part payment; interest of United States valueless.—Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to the lien if—

"(A) there is paid over to the Secretary or his delegate in partial satisfaction of the liability secured by the lien an amount determined by the Secretary or his delegate, which shall not be less than the value, as determined by the Secretary or his delegate, of the interest of the United States in the part to be so discharged, or

"(B) the Secretary or his delegate determines at any time that the interest of the United States in the part to be so discharged has no value.

In determining the value of the interest of the United States in the part to be so discharged, the Secretary or his delegate shall give consideration to the value of such part and to such liens thereon as have priority over the lien of the United States.

"(3) Substitution of proceeds of sale.—Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate

may issue a certificate of discharge of any part of the property subject to the lien if such part of the property is sold and, pursuant to an agreement with the Secretary or his delegate, the proceeds of such sale are to be held, as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as such liens and claims had with respect to the discharged property.

"(c) ESTATE OR GIFT TAX.—Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any or all of the property subject to any lien imposed by section 6324 if the Secretary or his delegate finds that the liability secured by such lien has been fully satisfied or provided for.

"(d) SUBORDINATION OF LIEN.—Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of subordination of any lien imposed by this chapter upon any part of the property subject to such lien if—

"(1) there is paid over to the Secretary or his delegate an amount equal to the amount of the lien or interest to which the certificate subordinates the lien of the United States, or

"(2) the Secretary or his delegate believes that the

amount realizable by the United States from the property to which the certificate relates, or from any other property subject to the lien, will ultimately be increased by reason of the issuance of such certificate and that the ultimate collection of the tax liability will be facilitated by such subordination.

"(e) NONATTACHMENT OF LIEN.—If the Secretary or his delegate determines that, because of confusion of names or otherwise, any person (other than the person against whom the tax was assessed) is or may be injured by the appearance that a notice of lien filed under section 6323 refers to such person, the Secretary or his delegate may issue a certificate that the lien does not attach to the property of such person.

"(f) EFFECT OF CERTIFICATE.—

"(1) CONCLUSIVENESS.—Except as provided in paragraphs (2) and (3), if a certificate is issued pursuant to this section by the Secretary or his delegate and is filed in the same office as the notice of lien to which it relates (if such notice of lien has been filed) such certificate shall have the following effect:

"(A) in the case of a certificate of release, such certificate shall be conclusive that the lien referred to in such certificate is extinguished;

"(B) in the case of a certificate of discharge,

such certificate shall be conclusive that the property covered by such certificate is discharged from the lien;

"(C) in the case of a certificate of subordination, such certificate shall be conclusive that the lien or interest to which the lien of the United States is subordinated is superior to the lien of the United States; and

"(D) in the case of a certificate of nonattachment, such certificate shall be conclusive that the lien of the United States does not attach to the property of the person referred to in such certificate.

"(2) Revocation of certificate of release or nonattachment.—If the Secretary or his delegate determines that a certificate of release or nonattachment of a lien imposed by section 6321 was issued erroneously or improvidently, or if a certificate of release of such lien was issued pursuant to a collateral agreement entered into in connection with a compromise under section 7122 which has been breached, and if the period of limitation on collection after assessment has not expired, the Secretary or his delegate may revoke such certificate and reinstate the lien—

"(A) by mailing notice of such revocation to

the person against whom the tax was assessed at his last known address, and

"(B) by filing notice of such revocation in the same office in which the notice of lien to which it relates was filed (if such notice of lien had been filed).

Such reinstated lien (i) shall be effective on the date notice of revocation is mailed to the taxpayer in accordance with the provisions of subparagraph (A), but not earlier than the date on which any required filing of notice of revocation is filed in accordance with the provisions of subparagraph (B), and (ii) shall have the same force and effect (as of such date), until the expiration of the period of limitation on collection after assessment, as a lien imposed by section 6321 (relating to lien for taxes).

"(3) CERTIFICATES VOID UNDER CERTAIN CONDITIONS.—Notwithstanding any other provision of this subtitle, any lien imposed by this chapter shall attach to any property with respect to which a certificate of discharge has been issued if the person liable for the tax reacquires such property after such certificate has been issued.

"(g) FILING OF CERTIFICATES AND NOTICES.—If a certificate or notice issued pursuant to this section may not be

filed in the office designated by State law in which the notice of lien imposed by section 6321 is filed, such certificate or notice shall be effective if filed in the office of the clerk of the United States district court for the judicial district in which such office is situated.

"(h) CROSS REFERENCE.—

"For provisions relating to bonds, see chapter 73 (sec. 7101 and following)."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter C of chapter 64 is amended by striking out

"Sec. 6325. Release of lien or partial discharge of property."

and inserting in lieu thereof

"Sec. 6325. Release of lien or discharge of property."

SEC. 104. SEIZURE OF PROPERTY FOR COLLECTION OF TAXES.

(a) EFFECT OF LEVY.—Section 6331(b) (relating to seizure and sale of property by levy and distraint) is amended by inserting after the first sentence the following new sentence: "A levy shall extend only to property possessed and obligations existing at the time thereof."

(b) SURRENDER OF PROPERTY SUBJECT TO LEVY.—Section 6332 (relating to surrender of property subject to levy) is amended—

(1) by striking out "Any person" in subsection (a) and inserting in lieu thereof "Except as otherwise provided in subsection (b), any person";

(2) by amending subsection (b) to read as follows:

"*(b)* SPECIAL RULE FOR LIFE INSURANCE AND ENDOWMENT CONTRACTS.—

"*(1)* IN GENERAL.—*A levy on an organization with respect to a life insurance or endowment contract issued by such organization shall, without necessity for the surrender of the contract document, constitute a demand by the Secretary or his delegate for payment of the amount described in paragraph (2) and the exercise of the right of the person against whom the tax is assessed to the advance of such amount. Such organization shall pay over such amount 90 days after service of notice of levy. Such notice shall include a certification by the Secretary or his delegate that a copy of such notice has been mailed to the person against whom the tax is assessed at his last known address.*

"*(2)* SATISFACTION OF LEVY.—*Such levy shall be deemed to be satisfied if such organization pays over to the Secretary or his delegate the amount which the person against whom the tax is assessed could have had advanced to him by such organization on the date prescribed in paragraph (1) for the satisfaction of such levy, increased by the amount of any advance (including contractual interest thereon) made to such person on or after the date such organization had actual notice or*

knowledge (within the meaning of section 6323(i)(1)) of the existence of the lien with respect to which such levy is made, other than an advance (including contractual interest thereon) made automatically to maintain such contract in force under an agreement entered into before such organization had such notice or knowledge.

"(3) ENFORCEMENT PROCEEDINGS.—The satisfaction of a levy under paragraph (2) shall be without prejudice to any civil action for the enforcement of any lien imposed by this title with respect to such contract.";

(3) by redesignating subsection (c) as subsection (e); and

(4) by inserting after subsection (b) the following new subsections:

"(c) ENFORCEMENT OF LEVY.—

"(1) EXTENT OF PERSONAL LIABILITY.—Any person who fails or refuses to surrender any property or rights to property, subject to levy, upon demand by the Secretary or his delegate, shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of taxes for the collection of which such levy has been made, together with costs and interest on such sum at the rate of 6 percent per annum

from the date of such levy. Any amount (other than costs) recovered under this paragraph shall be credited against the tax liability for the collection of which such levy was made.

"(2) PENALTY FOR VIOLATION.—In addition to the personal liability imposed by paragraph (1), if any person required to surrender property or rights to property fails or refuses to surrender such property or rights to property without reasonable cause, such person shall be liable for a penalty equal to 50 percent of the amount recoverable under paragraph (1). No part of such penalty shall be credited against the tax liability for the collection of which such levy was made.

"(d) EFFECT OF HONORING LEVY.—Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the Secretary or his delegate, surrenders such property or rights to property (or discharges such obligation) to the Secretary or his delegate (or who pays a liability under subsection (c)(1)) shall be discharged from any obligation or liability to the delinquent taxpayer with respect to such property or rights to property arising from such surrender or payment. In the case of a levy which is satisfied pursuant to subsection (b), such organization shall also be discharged from any obliga-

tion or liability to any beneficiary arising from such surrender or payment."

(c) PROPERTY EXEMPT FROM LEVY.—*Section 6334 (a) (relating to enumeration of property exempt from levy) is amended—*

(1) by striking out "or Territory" in paragraph (4); and

(2) by adding at the end thereof the following new paragraphs:

"(6) CERTAIN ANNUITY AND PENSION PAYMENTS.—*Annuity or pension payments under the Railroad Retirement Act, benefits under the Railroad Unemployment Insurance Act, special pension payments received by a person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor roll (38 U.S.C. 562), and annuities based on retired or retainer pay under chapter 73 of title 10 of the United States Code.*

"(7) WORKMEN'S COMPENSATION.—*Any amount payable to an individual as workmen's compensation (including any portion thereof payable with respect to dependents) under a workmen's compensation law of the United States, any State, the District of Columbia, or the Commonwealth of Puerto Rico."*

(d) PUBLICATION OF NOTICE OF SALE.—*The first sentence of section 6335(b) (relating to notice of sale of seized property) is amended to read as follows: "The Secretary or his delegate shall as soon as practicable after the seizure of the property give notice to the owner, in the manner prescribed in subsection (a), and shall cause a notification to be published in some newspaper published or generally circulated within the county wherein such seizure is made, or, if there be no newspaper published or generally circulated in such county, shall post such notice at the post office nearest the place where the seizure is made, and in not less than two other public places."*

(e) REDEMPTION PERIOD.—*Paragraph (1) of section 6337(b) (relating to period of redemption of real estate after sale) is amended by striking out "1 year" and inserting in lieu thereof "120 days".*

(f) PREPARATION OF DEED.—*Section 6338(c) (relating to real property purchased by United States) is amended to read as follows:*

"(c) REAL PROPERTY PURCHASED BY UNITED STATES.—*If real property is declared purchased by the United States at a sale pursuant to section 6335, the Secretary or his delegate shall at the proper time execute a deed therefor, and without delay cause such deed to be duly recorded in the proper registry of deeds."*

(g) *Discharge of Junior Encumbrances.—Section 6339 (relating to legal effect of certificate of sale of personal property and deed of real property) is amended by adding at the end thereof the following new subsections:*

"(c) *Effect of Junior Encumbrances.—A certificate of sale of personal property given or a deed to real property executed pursuant to section 6338 shall discharge such property from all liens, encumbrances, and titles over which the lien of the United States with respect to which the levy was made had priority.*

"(d) *Cross References.—*

"(1) For distribution of surplus proceeds, see section 6342(b).

"(2) For judicial procedure with respect to surplus proceeds, see section 7426(a)(2)."

(h) *Application of Proceeds of Levy and Sale.—Subsection (a) of section 6342 (relating to collection of liability) is amended—*

(1) by striking out so much thereof as precedes paragraph (1) and inserting in lieu thereof

"(a) *Collection of Liability.—Any money realized by proceedings under this subchapter (whether by seizure, by surrender under section 6332 (except pursuant to subsection (c)(2) thereof), or by sale of seized property) or by sale of property redeemed by the United States (if the interest of the United States in such*

property was a lien arising under the provisions of this title) shall be applied as follows:";

(2) by striking out "under this subchapter" in paragraph (1); and

(3) by adding "or the sale was conducted" after "levy was made" in paragraph (3).

(i) RETURN OF PROPERTY.—Section 6343 (relating to authority to release levy) is amended—

(1) by striking out the heading of such section and inserting in lieu thereof the following:

"SEC. 6343. AUTHORITY TO RELEASE LEVY AND RETURN PROPERTY.";

(2) by striking out "It shall be" and inserting in lieu thereof "(a) RELEASE OF LEVY.—It shall be"; and

(3) by adding at the end thereof the following new subsection:

"(b) RETURN OF PROPERTY.—If the Secretary or his delegate determines that property has been wrongfully levied upon, it shall be lawful for the Secretary or his delegate to return—

"(1) the specific property levied upon,

"(2) an amount of money equal to the amount of money levied upon, or

"(3) an amount of money equal to the amount of money received by the United States from a sale of such property.

Property may be returned at any time. An amount equal to the amount of money levied upon or received from such sale may be returned at any time before the expiration of 9 months from the date of such levy. For purposes of paragraph (3), if property is declared purchased by the United States at a sale pursuant to section 6335(e) (relating to manner and conditions of sale), the United States shall be treated as having received an amount of money equal to the minimum price determined pursuant to such section or (if larger) the amount received by the United States from the resale of such property."

(j) CLERICAL AMENDMENT.—The table of sections for subchapter D of chapter 64 is amended by striking out—

"Sec. 6343. Authority to release levy."

and inserting in lieu thereof

"Sec. 6343. Authority to release levy and return property."

SEC. 105. LIABILITY FOR WITHHELD TAXES.

(a) EFFECT ON THIRD PARTIES.—Chapter 25 (relating to general provisions relating to employment taxes) is

amended by adding at the end thereof the following new section:

"SEC. 3505. LIABILITY OF THIRD PARTIES PAYING OR PROVIDING FOR WAGES.

"(a) DIRECT PAYMENT BY THIRD PARTIES.—For purposes of sections 3102, 3202, 3402, and 3403, if a lender, surety, or other person, who is not an employer under such sections with respect to an employee or group of employees, pays wages directly to such an employee or group of employees, employed by one or more employers, or to an agent on behalf of such employee or employees, such lender, surety, or other person shall be liable in his own person and estate to the United States in a sum equal to the taxes (together with interest) required to be deducted and withheld from such wages by such employer.

"(b) PERSONAL LIABILITY WHERE FUNDS ARE SUPPLIED.—If a lender, surety, or other person supplies funds to or for the account of an employer for the specific purpose of paying wages of the employees of such employer, with actual notice or knowledge (within the meaning of section 6323(i)(1)) that such employer does not intend to or will not be able to make timely payment or deposit of the amounts of tax required by this subtitle to be deducted and withheld by such employer from such wages, such lender, surety, or other person shall be liable in his own person and estate to the United

States in a sum equal to the taxes (together with interest) which are not paid over to the United States by such employer with respect to such wages. However, the liability of such lender, surety, or other person shall be limited to an amount equal to 25 percent of the amount so supplied to or for the account of such employer for such purpose.

"(c) EFFECT OF PAYMENT.—Any amounts paid to the United States pursuant to this section shall be credited against the liability of the employer."

(b) PERFORMANCE BONDS OF CONTRACTORS FOR PUBLIC BUILDINGS OR WORKS.—The first section of the Act entitled "An Act requiring contracts for the construction, alteration, and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by an additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said public buildings or public work", approved August 24, 1935 (49 Stat. 793; 40 U.S.C. 270a), is amended by adding at the end thereof the following new subsection:

"(d) Every performance bond required under this section shall specifically provide coverage for taxes imposed by the United States which are collected, deducted, or withheld from wages paid by the contractor in carrying out the contract with respect to which such bond is furnished. However,

the United States shall give the surety or sureties on such bond written notice, with respect to any such unpaid taxes attributable to any period, within ninety days after the date when such contractor files a return for such perod, except that no such notice shall be given more than one hundred and eighty days from the date when a return for the period was required to be filed under the Internal Revenue Code of 1954. No suit on such bond for such taxes shall be commenced by the United States unless notice is given as provided in the preceding sentence, and no such suit shall be commenced after the expiration of one year after the day on which such notice is given."

(c) Clerical Amendment.—The table of sections for chapter 25 is amended by adding at the end thereof the following:

"Sec. 3505. Liability of third parties paying or providing for wages."

SEC. 106. SUSPENSION OF RUNNING OF PERIOD OF LIMITATION.

(a) Assets of Estate of Decedent or Incompetent.—Section 6503(b) (relating to assets of taxpayer in control or custody of court) is amended by striking out "(other than the estate of a decedent or of an incompetent)" and "or Territory".

(b) Collection Hindered by Absence of Taxpayer.—Section 6503(c) (relating to location of property

outside the United States or removal of property from the United States) is amended to read as follows:

"(c) Taxpayer Outside United States.—The running of the period of limitations on collection after assessment prescribed in section 6502 shall be suspended for the period during which the taxpayer is outside the United States if such period of absence is for a continuous period of at least 6 months. If the preceding sentence applies and at the time of the taxpayer's return to the United States the period of limitations on collection after assessment prescribed in section 6502 would expire before the expiration of 6 months from the date of his return, such period shall not expire before the expiration of such 6 months."

(c) Wrongful Seizure of Property of Third Parties.—Section 6503 (relating to suspension of running of period of limitation) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) Wrongful Seizure of Property of Third Party.—The running of the period of limitations on collection after assessment prescribed in section 6502 shall be suspended for a period equal to the period from the date property (including money) of a third party is wrongfully seized or received by the Secretary or his delegate to

the date the Secretary or his delegate returns property pursuant to section 6343(b) or the date on which a judgment secured pursuant to section 7426 with respect to such property becomes final, and for 30 days thereafter. The running of the period of limitations on collection after assessment shall be suspended under this subsection only with respect to the amount of such assessment equal to the amount of money or the value of specific property returned."

SEC. 107. PROCEEDINGS WHERE UNITED STATES HAS TITLE TO PROPERTY.

(a) ACTION TO QUIET TITLE.—Section 7402 (relating to jurisdiction of district courts) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) TO QUIET TITLE.—The United States district courts shall have jurisdiction of any action brought by the United States to quiet title to property if the title claimed by the United States to such property was derived from enforcement of a lien under this title."

(b) SALE BIDS.—Section 7403(c) (relating to adjudication and decree) is amended by adding at the end thereof the following new sentence: "If the property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of

such lien with expenses of sale, as the Secretary or his delegate directs."

SEC. 108. INTERVENTION BY UNITED STATES.

Section 7424 (relating to civil action to clear title to property) is amended to read as follows:

"SEC. 7424. INTERVENTION.

"If the United States is not a party to a civil action or suit, the United States may intervene in such action or suit to assert any lien arising under this title on the property which is the subject of such action or suit. The provisions of section 2410 of title 28 of the United States Code (except subsection (b)) and of section 1444 of title 28 of the United States Code shall apply in any case in which the United States intervenes as if the United States had originally been named a defendant in such action or suit. In any case in which the application of the United States to intervene is denied, the adjudication in such civil action or suit shall have no effect upon such lien."

SEC. 109. DISCHARGE OF LIENS HELD BY UNITED STATES.

Subchapter B of chapter 76 (relating to proceedings by taxpayers) is amended by redesignating section 7425 as section 7427 and by inserting after section 7424 the following new section:

"SEC. 7425. DISCHARGE OF LIENS.

"(a) JUDICIAL PROCEEDINGS.—If the United States is not joined as a party, a judgment in any civil action or suit described in subsection (a) of section 2410 of title 28 of the United States Code, or a judicial sale pursuant to such a judgment, with respect to property on which the United States has or claims a lien under the provisions of this title—

"(1) shall be made subject to and without disturbing the lien of the United States, if notice of such lien has been filed in the place provided by law for such filing at the time such action or suit is commenced, or

"(2) shall have the same effect with respect to the discharge or divestment of such lien of the United States as may be provided with respect to such matters by the local law of the place where such property is situated, if no notice of such lien has been filed in the place provided by law for such filing at the time such action or suit is commenced or if the law makes no provision for such filing.

If a judicial sale of property pursuant to a judgment in any civil action or suit to which the United States is not a party discharges a lien of the United States arising under the provisions of this title, the United States may claim, with the same priority as its lien had against the property sold, the

proceeds (exclusive of costs) of such sale at any time before the distribution of such proceeds is ordered.

"(b) OTHER SALES.—Notwithstanding subsection (a), a sale of property on which the United States has or claims a lien, or a title derived from enforcement of a lien, under the provisions of this title, made pursuant to an instrument creating a lien on such property, pursuant to a confession of judgment on the obligation secured by such an instrument, or pursuant to a nonjudicial sale under a statutory lien on such property—

"(1) shall, except as otherwise provided, be made subject to and without disturbing such lien or title, if notice of such lien was filed or such title recorded in the place provided by law for such filing or recording more than 30 days before such sale and the United States is not given notice of such sale in the manner prescribed in subsection (c)(1); or

"(2) shall have the same effect with respect to the discharge or divestment of such lien or such title of the United States, as may be provided with respect to such matters by the local law of the place where such property is situated, if—

"(A) notice of such lien or such title was not filed or recorded in the place provided by law for

such filing more than 30 days before such sale,

"(B) the law makes no provision for such filing, or

"(C) notice of such sale is given in the manner prescribed in subsection (c)(1).

"(c) SPECIAL RULES.—

"(1) NOTICE OF SALE.—Notice of a sale to which subsection (b) applies shall be given (in accordance with regulations prescribed by the Secretary or his delegate) in writing, by registered or certified mail or by personal service, not less than 25 days prior to such sale, to the Secretary or his delegate.

"(2) CONSENT TO SALE.—Notwithstanding the notice requirement of subsection (b)(2)(C), a sale described in subsection (b) of property shall discharge or divest such property of the lien or title of the United States if the United States consents to the sale of such property free of such lien or title.

"(3) SALE OF PERISHABLE GOODS.—Notwithstanding the notice requirement of subsection (b)(2)(C), a sale described in subsection (b) of property liable to perish or become greatly reduced in price or value by keeping, or which cannot be kept without great expense, shall discharge or divest such property of the lien or title of the United States if notice of such sale is given

(in accordance with regulations prescribed by the Secretary or his delegate) in writing, by registered or certified mail or by personal service, to the Secretary or his delegate before such sale. The proceeds (exclusive of costs) of such sale shall be held as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as such liens and claims had with respect to the property sold, for not less than 30 days after the date of such sale.

"(d) REDEMPTION BY UNITED STATES.—

"(1) RIGHT TO REDEEM.—In the case of a sale of real property to which subsection (b) applies to satisfy a lien prior to that of the United States, the Secretary or his delegate may redeem such property within the period of 120 days from the date of such sale or the period allowable for redemption under local law, whichever is longer.

"(2) AMOUNT TO BE PAID.—In any case in which the United States redeems real property pursuant to paragraph (1), the amount to be paid for such property shall be the amount prescribed by subsection (d) of section 2410 of title 28 of the United States Code.

"(3) CERTIFICATE OF REDEMPTION.—

"(A) IN GENERAL.—In any case in which real property is redeemed by the United States pursuant to this subsection, the Secretary or his delegate shall

apply to the officer designated by local law, if any, for the documents necessary to evidence the fact of redemption and to record title to such property in the name of the United States. If no such officer is designated by local law or if such officer fails to issue such documents, the Secretary or his delegate shall execute a certificate of redemption therefor.

"(B) FILING.—The Secretary or his delegate shall, without delay, cause such documents or certificate to be duly recorded in the proper registry of deeds. If the State in which the real property redeemed by the United States is situated has not by law designated an office in which such certificate may be recorded, the Secretary or his delegate shall file such certificate in the office of the clerk of the United States district court for the judicial district in which such property is situated.

"(C) EFFECT.—A certificate of redemption executed by the Secretary or his delegate shall constitute prima facie evidence of the regularity of such redemption and shall, when recorded, transfer to the United States all the rights, title, and interest in and to such property acquired by the person from whom the United States redeems such property by virtue of the sale of such property."

SEC. 110. PROCEEDINGS BY THIRD PARTIES AGAINST THE UNITED STATES.

(a) ACTIONS BY THIRD PARTIES.—Subchapter B of chapter 76 (relating to proceedings by taxpayers) is amended by inserting after section 7425 (as added by section 109 of this Act) the following new section:

"SEC. 7426. CIVIL ACTIONS BY PERSONS OTHER THAN TAXPAYERS.

"(a) ACTIONS PERMITTED.—

"(1) WRONGFUL LEVY.—If a levy has been made on property or property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property and that such property was wrongfully levied upon may bring a civil action against the United States in a district court of the United States. Such action may be brought without regard to whether such property has been surrendered to or sold by the Secretary or his delegate.

"(2) SURPLUS PROCEEDS.—If property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property junior to that of the United States and to be

legally entitled to the surplus proceeds of such sale may bring a civil action against the United States in a district court of the United States.

"(3) SUBSTITUTED SALE PROCEEDS.—If property has been sold pursuant to an agreement described in section 6325(b)(3) (relating to substitution of proceeds of sale), any person who claims to be legally entitled to all or any part of the amount held as a fund pursuant to such agreement may bring a civil action against the United States in a district court of the United States.

"(b) ADJUDICATION.—The district court shall have jurisdiction to grant only such of the following forms of relief as may be appropriate in the circumstances:

"(1) INJUNCTION.—If a levy or sale would irreparably injure rights in property which the court determines to be superior to rights of the United States in such property, the court may grant an injunction to prohibit the enforcement of such levy or to prohibit such sale.

"(2) RECOVERY OF PROPERTY.—If the court determines that such property has been wrongfully levied upon, the court may—

"(A) order the return of specific property if the United States is in possession of such property;

"(B) grant a judgment for the amount of money levied upon; or

"(C) grant a judgment for an amount not exceeding the amount received by the United States from the sale of such property.

For purposes of subparagraph (C), if the property was declared purchased by the United States at a sale pursuant to section 6335(e) (relating to manner and conditions of sale), the United States shall be treated as having received an amount equal to the minimum price determined pursuant to such section or (if larger) the amount received by the United States from the resale of such property.

"(3) SURPLUS PROCEEDS.—If the court determines that the interest or lien of any party to an action under this section was transferred to the proceeds of a sale of such property, the court may grant a judgment in an amount equal to all or any part of the amount of the surplus proceeds of such sale.

"(4) SUBSTITUTED SALE PROCEEDS.—If the court determines that a party has an interest in or lien on the amount held as a fund pursuant to an agreement described in section 6325(b)(3) (relating to substitution of proceeds of sale), the court may grant a judgment

in an amount equal to all or any part of the amount of such fund.

"(c) Validity of Assessment.—For purposes of an adjudication under this section, the assessment of tax upon which the interest or lien of the United States is based shall be conclusively presumed to be valid.

"(d) Limitation on Rights of Action.—No action may be maintained against any officer or employee of the United States (or former officer or employee) or his personal representative with respect to any acts for which an action could be maintained under this section.

"(e) Substitution of United States as Party.—If an action, which could be brought against the United States under this section, is improperly brought against any officer or employee of the United States (or former officer or employee) or his personal representative, the court shall order, upon such terms as are just, that the pleadings be amended to substitute the United States as a party for such officer or employee as of the time such action was commenced upon proper service of process on the United States.

"(f) Provision Inapplicable.—The provisions of section 7422(a) (relating to prohibition of suit prior to filing claim for refund) shall not apply to actions under this section.

"(g) INTEREST.—Interest shall be allowed at the rate of 6 percent per annum—

"(1) in the case of a judgment pursuant to subsection (b)(2)(B), from the date the Secretary or his delegate receives the money wrongfully levied upon to the date of payment of such judgment; and

"(2) in the case of a judgment pursuant to subsection (b)(2)(C), from the date of the sale of the property wrongfully levied upon to the date of payment of such judgment.

"(h) CROSS REFERENCE.—

"For period of limitation, see section 6532(c)."

(b) PERIOD OF LIMITATION ON SUIT.—Section 6532 (relating to period of limitation on suits) is amended by adding at the end thereof the following new subsection:

"(c) SUITS BY PERSONS OTHER THAN TAXPAYERS.—

"(1) GENERAL RULE.—Except as provided by paragraph (2), no suit or proceeding under section 7426 shall be begun after the expiration of 9 months from the date of the levy or agreement giving rise to such action.

"(2) PERIOD WHEN CLAIM IS FILED.—If a request is made for the return of property described in section 6343(b), the 9-month period prescribed in paragraph (1) shall be extended for a period of 12 months from

the date of filing of such request or for a period of 6 months from the date of mailing by registered or certified mail by the Secretary or his delegate to the person making such request of a notice of disallowance of the part of the request to which the action relates, whichever is shorter."

(c) PROHIBITION OF SUITS TO RESTRAIN ASSESSMENT OR COLLECTION.—Section 7421(a) (relating to prohibition of suits to restrain assessment or collection of tax) is amended to read as follows:

"*(a) TAX.—Except as provided in sections 6212(a) and (c), 6213(a), and 7426 (a) and (b)(1), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.*"

(d) CLERICAL AMENDMENTS.—

(1) The heading of subchapter B of chapter 76 is amended to read as follows:

"***Subchapter B—Proceedings by Taxpayers and Third Parties***"

(2) The table of sections for subchapter B of chapter 76 is amended by striking out

"*Sec. 7424. Civil action to clear title to property.*
"*Sec. 7425. Cross references.*"

and inserting in lieu thereof

> *"Sec. 7424. Intervention.*
> *"Sec. 7425. Discharge of liens.*
> *"Sec. 7426. Civil actions by persons other than taxpayers.*
> *"Sec. 7427. Cross references."*

(3) The table of subchapters for chapter 76 is amended by striking out

> *"SUBCHAPTER B. Proceedings by Taxpayers."*

and inserting in lieu thereof

> *"SUBCHAPTER B. Proceedings by Taxpayers and Third Parties."*

SEC. 111. SALE OF PROPERTY ACQUIRED BY UNITED STATES.

(a) PERSONAL PROPERTY ACQUIRED.—Section 7505 (a) (relating to sale of personal property purchased by the United States) is amended by striking out "purchased by the United States under the authority of section 6335(e) (relating to purchase for the account of the United States of property sold under levy)" and inserting in lieu thereof "acquired by the United States in payment of or as security for debts arising under the internal revenue laws".

(b) REAL PROPERTY REDEEMED.—Section 7506(a) (relating to person charged with administration of real estate acquired by the United States) is amended by striking out "for the payment of such debts," and inserting in lieu thereof "for the payment of such debts, or which has been redeemed by the United States,".

(c) Clerical Amendments.—

(1) The heading of section 7505 is amended by striking out "PURCHASED" and inserting in lieu thereof "ACQUIRED";

(2) The table of sections for chapter 77 is amended by striking out

"Sec. 7505. Sale of personal property purchased by the United States."

and inserting in lieu thereof

"Sec. 7505. Sale of personal property acquired by the United States."

SEC. 112. FUND FOR REDEMPTION OF REAL PROPERTY BY UNITED STATES.

(a) Creation of Fund for Redemption of Real Property.—Subchapter A of chapter 80 (relating to application of internal revenue laws) is amended by adding at the end thereof the following new section:

"SEC. 7810. REVOLVING FUND FOR REDEMPTION OF REAL PROPERTY.

"(a) Establishment of Fund.—There is established a revolving fund, under the control of the Secretary or his delegate, which shall be available without fiscal year limitation for all expenses necessary for the redemption (by the Secretary or his delegate) of real property as provided in section 7425(d) and section 2410 of title 28 of the United States Code. There are authorized to be appropriated from

time to time such sums (not to exceed $1,000,000 in the aggregate) as may be necessary to carry out the purposes of this section.

"(b) Reimbursement of Fund.—The fund shall be reimbursed from the proceeds of a subsequent sale of real property redeemed by the United States in an amount equal to the amount expended out of such fund for such redemption.

"(c) System of Accounts.—The Secretary or his delegate shall maintain an adequate system of accounts for such fund and prepare annual reports on the basis of such accounts."

(b) Deposit of Money Received.—Section 7809 (relating to deposit of collections) is amended by striking out "and 7654," in subsection (a) and inserting in lieu thereof "7654, and 7810,"; and by amending subsection (b)—

(1) by striking out "and" at the end of paragraph (2),

(2) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and", and

(3) by inserting after paragraph (3) the following new paragraph:

"(4) Surplus proceeds in sales of redeemed property.—Surplus proceeds in any sale under section 7506 of real property redeemed by the

United States, after making allowance for the amount of the tax, interest, penalties, and additions thereto, and for the costs of sale."

(c) Clerical Amendment. The table of sections for subchapter A of chapter 80 is amended by adding at the end thereof the following:

"Sec. 7810. Revolving fund for redemption of real property."

SEC. 113. EFFECT OF JUDGMENT ON TAX LIEN AND LEVY.

(a) Lien Not Merged in Judgment.—Section 6322 (relating to period of lien) is amended by inserting after "liability for the amount so assessed" the following: "(or a judgment against the taxpayer arising out of such liability)".

(b) Levy.—Section 6502(a) (relating to length of period for collection after assessment) is amended by adding at the end thereof the following new sentence: "The period provided by this subsection during which a tax may be collected by levy shall not be extended or curtailed by reason of a judgment against the taxpayer."

SEC. 114. EFFECTIVE DATE.

(a) General Rule.—Except as otherwise provided, the amendments made by this title shall apply after the date of enactment of this Act, regardless of when a lien or a title of the United States arose or when the lien or interest of any other person was acquired.

(b) EXCEPTIONS.—The amendments made by this title shall not apply in any case—

(1) in which a lien or a title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before the date of enactment of this Act; or

(2) in which such amendments would—

(A) impair a priority enjoyed by any person (other than the United States) holding a lien or interest prior to the date of enactment of this Act;

(B) operate to increase the liability of any such person; or

(C) shorten the time for bringing suit with respect to transactions occurring before the date of enactment of this Act.

(c) LIABILITY FOR WITHHELD TAXES.—

(1) The amendments made by section 105(a) (relating to effect on third parties) shall apply only with respect to wages paid on or after January 1, 1967.

(2) The amendments made by section 105(b) (relating to performance bonds of contractors for public buildings or works) shall apply to contracts entered into

pursuant to invitations for bids issued after June 30, 1967.

(d) Civil Action To Clear Title to Property.—If, before the date of enactment of this Act, any person has commenced a civil action to clear title to property pursuant to section 7424 of the Internal Revenue Code of 1954 as in effect immediately before the enactment of this Act, such action shall be determined in accordance with section 7424 of such Code as in effect immediately before the enactment of this Act.

TITLE II—CONSENT OF UNITED STATES TO BE SUED IN ACTIONS AFFECTING PROPERTY IN WHICH IT HAS A LIEN OR INTEREST

SEC. 201. JOINDER OF UNITED STATES IN CERTAIN PROCEEDINGS.

Section 2410 of title 28 of the United States Code is amended by redesignating subsection (d) as subsection (e) and by striking out subsections (a), (b), and (c) and inserting in lieu thereof the following new subsections:

"(a) Under the conditions prescribed in this section and section 1444 of this title for the protection of the United States, the United States may be named a party in any civil action or suit in any district court, or in any State court

having jurisdiction of the subject matter—

"(1) to quiet title to,

"(2) to foreclose a mortgage or other lien upon,

"(3) to partition,

"(4) to condemn, or

"(5) of interpleader or in the nature of interpleader with respect to,

real or personal property on which the United States has or claims a mortgage or other lien.

"(b) The complaint or pleading shall set forth with particularity the nature of the interest or lien of the United States. In actions or suits involving liens arising under the internal revenue laws, the complaint or pleading shall include the name and address of the taxpayer whose liability created the lien and, if a notice of the tax lien was filed, the identity of the internal revenue office which filed the notice, and the date and place such notice of lien was filed. In actions in the State courts service upon the United States shall be made by serving the process of the court with a copy of the complaint upon the United States attorney for the district in which the action is brought or upon an assistant United States attorney or clerical employee designated by the United States attorney in writing filed with the clerk of the court in which the action is brought and by sending copies of the process and complaint,

by registered mail, or by certified mail, to the Attorney General of the United States at Washington, District of Columbia. In such actions the United States may appear and answer, plead or demur within sixty days after such service or such further time as the court may allow.

"(c) A judgment or decree in such action or suit shall have the same effect respecting the discharge of the property from the mortgage or other lien held by the United States as may be provided with respect to such matters by the local law of the place where the court is situated. However, an action to foreclose a mortgage or other lien, naming the United States as a party under this section, must seek judicial sale. A sale to satisfy a lien inferior to one of the United States shall be made subject to and without disturbing the lien of the United States, unless the United States consents that the property may be sold free of its lien and the proceeds divided as the parties may be entitled. Where a sale of real estate is made to satisfy a lien prior to that of the United States, the United States shall have one year from the date of sale within which to redeem, except that with respect to a lien arising under the internal revenue laws the period shall be 120 days or the period allowable for redemption under State law, whichever is longer, and in any case in which, under the provisions of section 505 of the Housing Act of 1950, as amended (12 U.S.C. 1701k),

and subsection (d) of section 1820 of title 38 of the United States Code, the right to redeem does not arise, there shall be no right of redemption. In any case where the debt owing the United States is due, the United States may ask, by way of affirmative relief, for the foreclosure of its own lien and where property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of its claim with expenses of sale, as may be directed by the head (or his delegate) of the department or agency of the United States which has charge of the administration of the laws in respect to which the claim of the United States arises.

"(d) In any case in which the United States redeems real property under this section or section 7425 of the Internal Revenue Code of 1954, the amount to be paid for such property shall be the sum of—

"(1) the actual amount paid by the purchaser at such sale (which, in the case of a purchaser who is the holder of the lien being foreclosed, shall include the amount of the obligation secured by such lien to the extent satisfied by reason of such sale),

"(2) interest on the amount paid (as determined under paragraph (1)) at 6 percent per annum from the date of such sale, and

"(3) the amount (if any) equal to the excess of (A) the expenses necessarily incurred in connection with such property, over (B) the income from such property plus (to the extent such property is used by the purchaser) a reasonable rental value of such property."

SEC. 202. JURISDICTION AND VENUE IN CERTAIN ACTIONS AGAINST UNITED STATES.

(a) JURISDICTION IN PROCEEDINGS BROUGHT BY THIRD PARTIES.—Section 1346 of title 28 of the United States Code is amended by adding at the end thereof the following new subsection:

"(e) The district courts shall have original jurisdiction of any civil action against the United States provided in section 7426 of the Internal Revenue Code of 1954."

(b) VENUE IN PROCEEDINGS BROUGHT BY THIRD PARTIES.—Section 1402 of title 28 of the United States Code is amended by adding at the end thereof the following new subsection:

"(c) Any civil action against the United States under subsection (e) of section 1346 of this title may be prosecuted only in the judicial district where the property is situated at the time of levy, or if no levy is made, in the judicial district

in which the event occurred which gave rise to the cause of action."

SEC. 203. EFFECTIVE DATE.

The amendments made by this title shall apply after the date of the enactment of this Act.

SECTION 9

COMMITTEE REPORT

FEDERAL TAX LIEN ACT OF 1966

REPORT

OF THE

COMMITTEE ON WAYS AND MEANS HOUSE OF REPRESENTATIVES

TO ACCOMPANY

H.R. 11256

A BILL TO AMEND THE INTERNAL REVENUE CODE OF 1954 WITH RESPECT TO THE PRIORITY AND EFFECT OF FEDERAL TAX LIENS AND LEVIES

AUGUST 24, 1966.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

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89TH CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPORT No. 1884

FEDERAL TAX LIEN ACT OF 1966

AUGUST 24, 1966.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MILLS, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H.R. 11256]

The Committee on Ways and Means, to whom was referred the bill (H.R. 11256) to amend the Internal Revenue Code of 1954 with respect to the priority and effect of Federal tax liens and levies, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause and inserts a substitute text which appears in the reported bill in italic type.

I. GENERAL STATEMENT

The Federal Tax Lien bill of 1966 represents the first comprehensive revision and modernization of the provisions of the internal revenue laws concerned with the relationship of Federal tax liens to the interests of other creditors.

Since the adoption of the Federal income tax in 1913, the nature of commercial financial transactions has changed appreciably. Business practices have been substantially revised and, as a result, many new types of secured transactions have been developed. In an attempt to take into account these changed commercial transactions, and to secure greater uniformity among the several States, a Uniform Commercial Code was promulgated somewhat over 10 years ago by the American Law Institute and the National Conference of Commissioners on Uniform State Laws. A revised version of this code is already law in over 40 States and could well be adopted by many of the remaining States in the near future. Under the Commercial Code, priority now is afforded new types of commercial secured creditors not previously protected.

This bill is in part an attempt to conform the lien provisions of the internal revenue laws to the concepts developed in this Uniform

Commercial Code. It represents an effort to adjust the provisions in the internal revenue laws relating to the collection of taxes of delinquent persons to the more recent developments in commercial practice (permitted and protected under State law) and to deal with a multitude of technical problems which have arisen over the past 50 years. The bill represents the culmination of a project initiated approximately 10 years ago by those concerned with the relationship of the tax lien provisions to the interests of other creditors. Since that time, the suggestions and ideas of various groups have been studied and analyzed carefully, both by the groups themselves and by the staffs of the Treasury Department and the congressional committees.

Under present law, a lien for Federal taxes arises when a taxpayer's liability is assessed. The lien attaches to all of the property he then holds or subsequently acquires. The assessment is made when the unpaid tax liability is entered on the appropriate records of the Internal Revenue Service—which occurs, in the case of a taxpayer who voluntarily shows the tax liability on his return, shortly after the time the return is filed. Although the lien arises on the date of assessment, present law provides that purchasers and certain categories of secured creditors are given priority over the tax lien up to the time a notice of the tax lien is filed in the appropriate local office as designated by State law. Mortgagees, pledgees, purchasers, and judgment lien creditors are given this priority status. In addition, in the case of securities and motor vehicles, present law provides that even a filed Federal tax lien is not generally to be effective as against a purchaser or a mortgagee or pledgee of the securities or a purchaser of motor vehicles.

This bill substantially improves the status of private secured creditors. This is accomplished, first, by expanding the categories of creditors protected as against a nonfiled tax lien to include a mechanic's lienor.

Second, various types of secured creditor interests already having, or given, priority status over tax liens are specifically defined, and it is provided that where those interests qualify under the definitions they are to be accorded this priority status whether or not they are in all other respects definite and complete at the time notice of the tax lien is filed.

Third, the bill adds to the "superpriority" status accorded securities and motor vehicles an additional eight categories of interests which are to be effective as against a tax lien, even though notice of the lien has been filed.

Fourth, a priority status is provided for interests arising under three types of financing agreements entered into before the tax lien filing—commercial transactions financing, real property construction or improvement financing, and obligatory disbursements—even though the funds are advanced or the property comes into existence after the tax lien filing. In the case of commercial transactions financing, the protection generally is afforded even though the property underlying the lien is not yet in existence or is turned over within a short time (45 days) after the tax lien filing as long as the loan or purchase is made within this time. In the absence of this grace period, commercial factors and other lenders would have to check on a daily basis to see if a tax lien is filed to protect their interests. Interests arising under the real property construction and improvement financing agreements

are protected even though loans are made after the tax lien filing because the construction is expected to enhance the value of the property underlying the tax lien. Interests arising under an obligatory disbursement agreement are protected because a person is obliged under a preexisting agreement to make disbursements after a tax lien filing and someone other than the taxpayer has relied on this obligation.

Fifth, a limited type of priority is given by the bill with respect to two other categories. In the case of security interests, generally, protection is afforded for a period of up to 45 days after the filing of a tax lien. Also, interest paid with respect to interests having priority over a Federal tax lien and costs of preserving property subject to an interest having a priority over a tax lien are given a priority over tax liens even though notice has been filed (where these items have the same priority as principal debt under State law).

In addition to dealing with the relative priority of creditors' interests as against Federal tax liens, the bill also makes numerous modifications in the provisions of the internal revenue laws dealing with the procedures to be followed in collecting the taxes of a delinquent person. In general terms, these modifications are intended to represent a reasonable accommodation of the interests of the Government in collecting the taxes of delinquent taxpayers with the rights of the taxpayers and third parties. The modifications are concerned with the procedures for levying upon property of a delinquent taxpayer, the liability of lenders, sureties, etc., for withholding taxes, the running of the statute of limitations in the case of delinquent tax liabilities, procedures arising out of, or with respect to the sale of property of delinquent taxpayers, the court procedures to be followed with respect to tax liens, and provision for the redemption of real property by the United States, where sold by a creditor with a higher priority.

This bill is reported unanimously by your committee, and the Treasury Department urges its adoption.

II. GENERAL EXPLANATION

A. PRIORITY OF LIENS (SEC. 101 OF THE BILL AND SEC. 6323 OF THE CODE)

(1) Interests having priority over tax liens (sec. 6323(a) of the code)

The Federal tax lien arises at the time a tax is assessed. However, present law lists certain categories of persons, whose interests arise after the Federal tax lien but before the Internal Revenue Service files a notice of the lien, who are given priority over the tax lien.

Under the bill, persons to be accorded priority over a tax lien include purchasers, judgment lien creditors, mechanic's lienors, and holders of security interests. Purchasers and judgment creditors (which has been interpreted as meaning judgment "lien" creditors), as well as mortgagees and pledgees (which under the bill are included as holders of security interests), already have this priority status under present law. The inclusion of mechanic's lienors expands somewhat the categories protected under present law. The definition of the term "purchaser" makes clear that a purchaser who has not taken title to, or fully paid for, property is protected. The substitution of "holder of a security interest" for "mortgagee" and "pledgee" replaces

the latter terms with a more general term used in the Uniform Commercial Code.[1] More important, however, it is intended that, under the bill, the various types of interests defined in this provision are to have a priority over a nonfiled Federal tax lien if they come within the definitions of these terms (discussed in No. 7 below), whether or not in all other regards they are definite and complete at the time notice of the tax lien is filed.

Although so-called purchase money mortgages are not specifically referred to under present law, it has generally been held that these interests are protected whenever they arise. This is based upon the concept that the taxpayer has acquired property or a right to property only to the extent that the value of the whole property or right exceeds the amount of the purchase money mortgage. This concept is not affected by the bill.

(2) "Superpriorities," or cases where tax lien is invalid even though notice filed (sec. 6323(b) of the code)

As previously indicated, present law provides that a Federal tax lien is not valid against holders of specified types of interests (those described in No. 1 above) unless notice of the lien is filed. In addition, in the case of securities and motor vehicles, present law provides that tax liens are not valid against purchasers of these forms of property and holders of certain interests in securities, even though notices of these liens are filed before the competing interests arise. These interests can be said to have "superpriorities." The bill retains these "superpriorities" for securities and motor vehicles and adds the following eight additional "superpriorities."

There may be some overlapping among categories of "superpriorities." In such cases, protection is to be granted if any category applies, even though another may also be relevant.

(*a*) *Retail purchases.*—Retail purchases of property presently are not protected against a prior filed tax lien. However, your committee believes it is unreasonable to expect the average purchaser from a retailer to go to the office of the county clerk or the Federal district court and search through the tax lien records merely to be sure that no prior tax lien has been recorded. While, in fact, the Internal Revenue Service rarely attempts to trace and claim this property after it is in the hands of individual purchasers, your committee sees no reason to have this potential liability hanging over these retail purchases. To remove this potential liability, the bill gives the purchaser of tangible personal property sold at retail in the ordinary course of the seller's trade or business a "superpriority" unless the purchaser intends the transaction to, or knows that it will, interfere with the collection of Federal internal revenue taxes.

(*b*) *Casual sales.*—A second new category of superpriority relates to casual sales. As readers of newspaper classified columns can testify, many items are sold by their owners at casual sales, often on the owners' premises. Under present law, a Federal tax lien which has attached to property follows the property, and if a notice of lien is properly filed, the lien takes precedence over the rights of a subsequent bona fide purchaser, even in the case of a casual sale. Your committee has been informed that, as a practical matter, the Internal Revenue Service

[1] See Uniform Commercial Code, sec. 9–310, regarding mechanic's lienors. Compare the definition of "security interest" in Uniform Commercial Code, sec. 1–201(37).

rarely proceeds against the purchaser unless the item involved has substantial value. The decision as to when to proceed against a purchaser varies from case to case based upon the view of the collector of the probable costs of the collection proceedings as against the value expected to be realized by the Internal Revenue Service upon the sale of the property seized. As in the case of retail sales, your committee believes it is unreasonable to require a casual purchaser to examine the tax records before making a relatively small purchase. As a result, your committee has decided to provide statutory protection to the purchaser of property in the case of a casual sale if the sale price is less than $250 and if the property is the type which would be exempt from levy. The principal types of property in this category are household goods, personal effects, books and tools of a business, wearing apparel, schoolbooks, etc. However, this protection is not provided for a purchaser who is a dealer, or a purchaser who has actual notice or knowledge (defined in the bill and discussed in No. 7 below) of the existence of the Federal tax lien, or a purchaser who knows that the sale is one of a series. The purchaser who is a dealer does not represent the type of sale intended to be covered by this provision. Nor is it intended to cover a purchaser who specifically knows of the tax lien at the time of his purchase. Similarly, the provision does not cover a purchase where the purchaser knows that it is one of a series of sales since, in such cases, the series of sales itself may be an indication that the seller is having credit problems. By providing this superpriority for casual sales up to a $250 limit, your committee does not intend that the Internal Revenue Service follow casual sales into the hands of the purchaser where the amount is larger if, in the absence of this provision, the Service for administrative or other reasons would not do so.

(*c*) *Possessory liens.*—The bill adds a third new category protecting a repairman against a filed Federal tax lien in certain cases. This is only true where local law gives a repairman (or similar person) holding continuous possession of tangible personal property a lien in order to secure payment of the repairman's charge for repairing or improving the property. In this case the repairman is protected against the Federal tax lien regardless of whether he knows of the Federal tax lien before undertaking the work, since his work can be expected to enhance the value of the property by his labor and, as a result, the value of the Federal tax lien. This superpriority is limited to the reasonable price of the job. This provision is intended to enable repairmen to undertake their work without burdening them with the duty of searching tax lien records.

(*d*) *Real property taxes and special assessments.*—A fourth new category of superpriority is provided for real property taxes and special assessments. As a practical matter, real property taxes and special assessments imposed by local governmental authorities presently limit the value of the security real property affords to Federal tax liens. This occurs because a purchaser cannot take the property free of these local liens. Consequently, any tax sale purchaser could be expected to take into account in his bid any outstanding local property taxes and special assessments. This situation is recognized in the bill and priority is given to these taxes and assessments even as against a filed Federal tax lien. However, the priority is provided only where local law gives similar priority to real property taxes and assessments as

against holders of security interests. "Assessment" is used here in the general sense of local law (not in the more limited sense usually employed in the tax lien provisions of the Internal Revenue Code).

(*e*) *Small repairs and improvements.*—A fifth new category of superpriority is made available for improvements and small repairs of real property. Your committee believes that it is unreasonable to expect construction workers or contractors to search for filed tax liens prior to undertaking small repair and improvement work. The basis for providing this priority is much the same as that in the case of a repairman having a possessory lien. It is believed that such a person should be permitted to rely upon the authority of an owner, who occupies his own residence, to contract for reasonable repairs and improvements to that residence without fear that his mechanic's lien will be defeated by a preexisting tax lien. Here, too, the work is likely to add to the value of the property and, therefore, increase the Government's chances of collection.

As a result, the bill grants protection against a Federal tax lien, even where notice has been filed, in situations where the applicable local law grants a mechanic's lien. However, to limit the protection to those situations where it is clearly unreasonable to expect a search for tax liens before work is undertaken, it is required that the real property involved contain not more than four dwelling units and be occupied by the owner of the residence, and that the contract price for the entire repair or improvement be not more than $1,000.

(*f*) *Attorneys' liens.*—A sixth new category of superpriority added by the bill relates to attorneys' fees. Federal tax liens cover all of a taxpayer's property, including causes of action and any amounts which may be owed to him under judgments or settlements of suits or other proceedings. It is believed that attorneys whose efforts result in obtaining or collecting judgments or settlements should be protected as to their reasonable fees to the extent that the fees are protected under local law. The attorney's fee in such a case can be thought of as similar in concept to the repairman's charge in that it can be expected to enhance the value of the taxpayer's property. Moreover, as in the case of a possessory lien, the efforts of the attorney may account for the realization of value by the taxpayer from the judgment or settlement. However, under the bill, in a proceeding against the Government, the Government retains its right to set off against any recoveries from it any amounts due it by the taxpayer on account of any tax or any other debt or claim. This setoff means that the attorney's lien "superpriority" does not apply with respect to judgments he obtains for the taxpayer against the Government.

(*g*) *Certain insurance contracts.*—A seventh new type of superpriority is provided in the case of certain insurance contracts. The bill provides that filed tax liens are not to be valid in the case of life insurance, endowment, or annuity contracts as against the insurance company carrying the contract where any of three conditions exist. First, priority is given to the insurance company where it makes a loan on the policy, even though a notice of tax lien has previously been filed, as long as the company has no actual notice or knowledge of the lien at the time the loan is made. This makes it unnecessary for an insurance company to check when a policy loan is made to see that notice of a tax lien has not been filed. Second, priority is given to the insurance company even where it has notice or knowledge of the filing of

notice of a tax lien, but only with respect to automatic premium loans (including interest) required by preexisting contract to be made to maintain the insurance in force. Where there is a preexisting agreement, it appears appropriate to give recognition to the loans made to keep the policy in effect in determining the priority status of tax liens. Third, once there is a tax levy on an insurance contract and the levy is satisfied, the insurance company is to have priority for any subsequent policy loans until the Treasury Department delivers to the insurance company a new notification of tax lien on the policy. This is to avoid the necessity of an insurance company having to check on whether the tax liability has in the meanwhile been paid in each case where there previously has been a levy on the policy.

(*h*) *Passbook loans.*—An eighth new superpriority is provided for passbook loans. Under present law, when a taxpayer who has a savings account in a bank or building and loan association presents his passbook for a withdrawal, the bank or association may pay out the entire amount of the account without incurring any liability with respect to any outstanding lien of the taxpayer of which it has no notice or knowledge. Since a bank or association is permitted to pay out the entire account in this way without regard to the status of any tax lien on the property, your committee has concluded that it is also appropriate to accord this same status to a passbook loan—a loan secured by the taxpayer's account at the lending institution. However, the bill protects a bank or institution with regard to a passbook loan only to the extent that the loan is secured by an account with the bank or association and where the institution, in fact, retains the passbook in its possession until the loan is completely paid off. This protection is available only for passbook loans made before the bank or association obtains actual notice or knowledge of the existence of the tax lien. Where a passbook loan is made before this knowledge and the bank or association subsequently obtains knowledge, this protection is not to attach to any additional loans made after the knowledge is acquired, even if the bank continues to retain the passbook from the preceeding, protected, passbook loan.

(3) Interests under commercial transactions financing agreement, etc., coming into existence after lax lien filing (*sec. 6323*(*c*) *of the code*)

In addition to the interests which are protected when they arise after the assessment of a tax but before tax lien filing (those of purchasers, holders of security interests, mechanic's lienors and judgment lien creditors), and the superpriorities, discussed above, which are protected even though they arise after tax lien filing, the bill provides priority for certain other interests. It provides that security interests arising under commercial transactions financing agreements, real property construction or improvement financing agreements, and obligatory disbursing agreements entered into before tax lien filing in certain cases are to be protected against Federal tax liens, even though the funds are advanced under the agreement, or the property referred to in the agreement, comes into existence after the tax lien filing.

This priority over filed tax liens for advances made after, or with respect to property coming into existence after, the filing of a tax lien is to occur only if local law gives priority in such cases. This protection under local law must be provided against a judgment lien creditor as of the time of the tax lien filing for the priority to be available.

(*a*) *Commercial transactions financing agreement.*—As indicated above, protection as against a filed tax lien is provided for a security interest arising out of three different types of agreements. The first of these is a commercial transactions financing agreement. This is an agreement, entered into in the ordinary course of the lender's trade or business, to make a loan secured by commercial financing security or to purchase commercial financing security (other than inventory), but protection is afforded only where the loan or purchase is made not later than 45 days after the tax lien filing (unless actual notice or knowledge of the filing is obtained sooner) and only where the inventory, accounts receivable, etc., are acquired before the 45 days have elapsed.

Commercial financing security is defined as accounts receivable, mortgages on real property, inventory, and paper of a kind ordinarily arising in commercial transactions.

In the case of inventory and accounts receivable financing, it is customary for a business, after establishing a line of credit, to receive advances from time to time as its needs arise. The security in such a case customarily is the inventory, accounts receivable, etc., which the business receives from time to time in the ordinary course of its business. The loan may be secured by these assets (including replacements of the initial assets) or these assets themselves (except inventory) may be sold to the financier. Under present law, a filed tax lien has priority over the rights of the lender or purchaser if the funds are not advanced, or the security purchased, until after the tax lien filing. In addition, it has priority under present law if the initial assets are replaced with assets acquired after the tax lien filing. As a result, under present law for a lender or purchaser to be sure that no tax lien has recently been filed, he must search the records each time before making an additional advance or purchase. The provision added by the bill is designed to keep this obligation within practical bounds by giving the interests arising under the agreements providing for these loans or purchases priority over a filed tax lien if the loans or purchases are made not later than 45 days after the tax lien filing and before the lender or purchaser has actual notice of the filing. This generally gives an inventory or accounts receivable, etc., financier assurance that his loans or purchases are not inferior to some recently filed tax lien as long as he searches the records at least once every 45 days.

(*b*) *Real property construction or improvement financing agreement.*—A second type of interest given priority over a filed tax lien is an interest arising under a real property construction or improvement financing agreement. In this case, also, the interest is given priority over a filed tax lien even though the cash disbursements involved are made after filing, but in this case without regard to whether the disbursements occur within 45 days of the tax lien filing. The types of financing agreement covered are generally those involving disbursements to an owner of a property for the construction or improvement of real property, or to a builder for a contract to construct or improve real property, as well as disbursements for the raising or harvesting of farm crops or the raising of livestock or other animals. Protection is limited to interests arising from cash disbursements by the lender except in the case of the financing of a farm crop, livestock,

or other animals, where the disbursement may also be in the form of the supplying of goods or services.

Your committee's bill gives priority in the case of security interests arising from disbursements for these purposes even though a notice of a tax lien has been filed because (as in the case of some of the superpriority categories) the disbursements generally enhance the value of the property for purposes of the tax lien. Thus, the completion of the construction or the improvement of the property or the completion of the raising of the crop or livestock usually increases the value of the property underlying the security interest for tax lien purposes by more than the amount of the disbursement being accorded the priority.

(*c*) *Obligatory disbursement agreement.*—The third category of interest given priority over a filed tax lien is that arising from an obligatory disbursement agreement. This is an agreement entered into by a person under which he is obliged to make disbursements because someone other than the taxpayer has relied on his obligation. An example is an irrevocable letter of credit where a bank issuing the letter must honor a demand for payment by a third party who advances credit in reliance upon the letter. This also covers cases where a surety agrees to finance the completion of a contract entered into by the taxpayer. In these cases no limitation is placed on the time during which a disbursement may be made as long as the person is obligated to do so at the time of the tax lien filing by a written agreement. As a result, if an effort is made to foreclose on a Federal tax lien before all of the potential obligations under an obligatory disbursement contract are met, these potential obligatory disbursements are given priority over the Federal tax lien. In such a case an amount sufficient to cover the potential obligations usually is set aside and used for these obligations. Only after these obligations have been met is any remainder available to satisfy the liability secured by the Federal tax lien.

Your committee's bill gives priority to interests arising under obligatory disbursement agreements as against filed tax liens since the obligation arises before the filing of the tax lien, although the disbursements are made after that time. Interests arising under these agreements are given priority over a filed tax lien only if the agreements are entered into by the disburser in the ordinary course of his trade or business. As a result, this provision does not apply in the case of accommodation endorsers to the extent the accommodation is not incidental to the operation of a trade or business. The priority over the tax lien in these cases also applies only to the extent of the property on hand at the time of tax lien filing (and put up as security) and property traceable to the obligatory disbursements. Thus, if a bank issues a line of credit to allow a taxpayer to finance the purchase of specified property and, subsequently, must make this disbursement, priority as against the tax lien is given only with respect to the property pledged and the specific property purchased and other property directly traceable to funds obtained from the sale of this specific property.

(*4*) *45-day period for the disbursements with respect to security interests generally* (*sec. 6323*(*d*) *of the code*)

In addition to the priorities previously discussed, the bill also provides priority generally with respect to security interests in property

held by the taxpayer before the tax lien filing which arise as a result of disbursements made within a period of up to 45 days after the filing of a tax lien (unless actual notice or knowledge of the filing is sooner obtained). However, for the priority to exist in such cases there must be a written agreement entered into before the tax lien filing and the security interest must be protected under local law against a judgment lien arising as of the time of the tax lien filing. The protection provided here, as in the case of the commercial transactions financing agreements, is designed to make it unnecessary for the holder of the security interest to search the records more often than once every 45 days where one or more disbursements are to be made by him.

(5) Priority of interest and expenses (sec. 6323(e) of the code)

The bill also provides a priority over filed tax liens for interest with respect to, and certain other costs of preserving property underlying, a lien or security interest which is superior to a Federal tax lien. For this priority to exist, however, local law must also provide this interest or expense the same priority as the lien or security interest to which it relates. The types of items referred to here are—

(1) Interest or carrying charges (including finance and service charges) on the obligation secured by a lien or security interest;

(2) Reasonable expenses of an indenture trustee (such as a trustee under a deed of trust) or agent holding a security interest;

(3) Reasonable expenses incurred in collecting and enforcing a secured obligation (including reasonable attorney's fees);

(4) Reasonable costs of insuring, preserving, or repairing the property subject to the lien or security interest;

(5) Reasonable costs of insuring payment of the obligation secured (such as mortgage insurance); and

(6) Amounts paid by the holder of a lien or security interest to satisfy another lien on the property where this other lien has priority over the Federal tax lien.

These interest charges and expenses arise out of a lien or security interest having priority over the Federal tax lien, and your committee believes that, although they are not fully determinable as of the time notice of the Federal tax lien is filed, nevertheless, they should be given priority since they relate to a lien or security interest having such a priority.

(6) Refiling of notice (sec. 6323(g) of the code)

Public notice of the existence of a Federal tax lien is given under present law by the filing of a notice of the lien. As indicated previously, various interests may come ahead of a Federal tax lien if they arise before the filing of notice. Once the filing occurs, under present law the filing remains effective without any refiling of the notice. However, tax liens may expire, not only because the tax liability is satisfied, but also because they become unenforceable as a result of the running of the statute of limitations. Generally, the Federal Government has 6 years from the date of assessment to take action to collect the tax. As a result, a potential creditor may well assume that if a notice of Federal tax lien indicates that the assessment occurred more than 6 years before his search of the records, he may then act safely on the assumption that the Federal tax lien

is no longer enforceable. As a result, he may feel secure in accepting the taxpayer's property as good security for the extension of credit. However, the 6-year statute of limitations on the collection of a Federal tax after assessment may be extended by agreement with the taxpayer or where the running of the statute of limitations is suspended, such as where the taxpayer is out of the country for at least 6 months (this latter exception is a modification of present law discussed in F(2), below). As a result, it is not unusual for a tax lien to be valid for more than 6 years after it arises.

To remove this potential source of uncertainty for creditors, this bill provides that the Internal Revenue Service is to be required to refile its notice of lien within the 1-year period ending 30 days after the expiration of the 6-year period beginning with the date of assessment of the tax. This must recur every 6 years after the first required refiling where the lien continues for the lien to retain its priority. The failure to refile the tax lien at the appropriate time is not to affect the validity of the lien itself. However, it nullifies the effect of the prior filing of the notice of the tax lien. Any timely refiling of a tax lien, in effect, represents a continuation of the prior filing, but any late refiling of a tax lien, in effect, constitutes a new filing. As a result, in the case of a late refiling, any security interest arising after the prior filing of the tax lien, but before the refiling, obtains a priority to the same extent and under the same conditions as if no tax lien had been filed prior to the time of the late refiling.

(7) Definitions and special rules (sec. 6323 (h) and (i) of the code)

A number of terms relating to the provisions discussed to this point are defined in the bill. The more significant of these are discussed below.

(*a*) *Security interest.*—Under present law, mortgagees and pledgees are given priorities over tax liens, notices of which have not yet been filed. The bill, as previously indicated, applies this priority status to holders of a "security interest." A security interest is an interest in property acquired by contract for the purpose of securing payment or performance of an obligation or as indemnification against loss or liability. This term, which includes mortgagees and pledgees, is used to substantially conform the internal revenue laws in this respect to the terminology of the Uniform Commercial Code. It is intended that if a Federal tax lien is invalid against an initial holder of a security interest, it also is to be invalid to the same extent against any person who succeeds to the interest of the initial holder, whether by purchase or otherwise.

A security interest is considered as arising when the following conditions are met:

> (1) the property [2] is in existence and the interest is protected under local law against a subsequent judgment lien arising out of an unsecured obligation; and
>
> (2) to the extent the holder has parted with money or money's worth.[3]

For Federal tax purposes, a security interest is not considered as existing until the conditions set forth here are met even though local

[2] As to what constitutes "property," it is intended that what becomes a part of realty is to be determined by local law.

[3] This is intended to include money previously parted with if, under local law, past consideration is sufficient to support an agreement giving rise to a security interest.

law may relate a security interest back to an earlier date and even though it might be an effective security interest as of the earlier date under the Uniform Commercial Code.

(*b*) *Mechanic's lienor.*—Under the bill a mechanic's lienor is a person who, under local law, has a lien on real property (or on the proceeds of a contract relating to real property) for furnishing services, labor, or materials in connection with the construction or improvement of the property. A mechanic is considered to have this lien under the bill as of the time the mechanic begins to furnish services, labor or materials, or, if later, the time when his lien is effective under local law. This protects mechanics under most State laws, where the mechanic's lien arises as of the time when the mechanic commences his labor or begins supplying material, even though he does not perfect his lien (such as by filing or by securing a judgment) until long after this time.

(*c*) *Purchaser.*—The bill adds a definition of "purchaser," a term which appears in present law but is not defined for purposes of the provisions relating to tax liens. A purchaser is defined as a person who, for adequate and full consideration in money or money's worth, acquires an interest (other than a lien or security interest) in property which is valid under local law as against subsequent purchasers without actual notice. By requiring "adequate and full consideration," the bill modifies the results reached in court decisions under present law in that the amount paid can no longer be so small as to have little relation to the value of the property acquired. However, this requirement is not intended to preclude a bona fide bargain purchaser or a purchaser who has not completed performance of his obligation, such as the completion of his installment payments. The term "purchaser" as used here includes one who has acquired a lease of property, an executory contract to purchase or lease property, one who has an option to purchase or lease property or an interest in it, or one who has an option to renew or extend a lease on property if the interest acquired is not a lien or a security interest. Thus, for example, the holder of an option is not to lose the right to acquire the property at the option price.

(*d*) *Actual notice or knowledge.*—In a number of places in the bill, rights are made to depend upon whether or not a person has "actual notice or knowledge" of a certain fact. Your committee has adopted the Uniform Commercial Code definition of this concept (as revised in the proposed 1962 amendments to the Uniform Commercial Code). The burden is to be upon the Internal Revenue Service to show the existence of actual notice or knowledge, wherever actual notice or knowledge is material in determining the priority of a Federal tax lien versus a competing lien or interest.

(*e*) *Subrogation.*—If local law permits one person to acquire by substitution the rights of another with respect to any lien or interest dealt with here, then the person substituted is to stand in the shoes of the person he replaces with regard to Federal tax liens.

B. SPECIAL LIENS FOR ESTATE AND GIFT TAXES (SEC. 102 OF THE BILL AND SEC. 6324 OF THE CODE)

Present law (sec. 6321) provides that when a person liable to pay a Federal tax refuses or neglects to do so after demand, the amount of the tax (plus interest, penalties, etc.) is to constitute a lien against

all his property. This applies to liabilities for all Federal taxes and is typically referred to as "the Federal tax lien." In addition, present law (sec. 6324) provides a special lien for estate and gift taxes.

The bill amends the provision relating to the special liens for estate and gift taxes, first, to make it clear that these special liens are extinguished after the running of the period of limitations on the collection of the underlying estate or gift tax liability and, second, to extend to additional categories of interests the same protection against the special estate and gift tax lien which these interests are accorded by the bill in the case of the general tax lien.

Present law provides that unless the estate and gift taxes due are paid in full at an earlier date, they are to be a lien (without tax lien filing) for 10 years from the date of death, upon the gross estate of the decedent, or for 10 years from the time the gift is made, on all gifts made during the year. The bill adds a phrase in these provisions making it clear that these special liens are to terminate before the expiration of the 10 years at any time the estate or gift tax liability becomes unenforceable by reason of the running of the statute of limitations on collection (usually a 6-year period after assessment).

The bill also conforms in certain respects the special lien for estate and gift taxes to changes made by the bill in the general tax lien provisions. Under present law, property transferred from an estate to others may continue to be subject to the special tax lien if the estate tax has not been paid in full. In the case of gifts, the donee is personally liable for the gift tax, if not paid by the donor, to the extent of the value of the gift. However, in both of these cases, exceptions under present law are made for property transferred to purchasers, mortgagees, or pledgees. The bill substitutes "a holder of a security interest" for the references to "mortgagees" and "pledgees" (since this is the concept used in the general tax lien provision and also is the term used in the Uniform Commercial Code) and also defines the term "purchaser."

Under present law, the special liens for estate and gift taxes are not valid with respect to a security, as against a mortgagee, pledgee, or purchaser of the security for adequate and full consideration, if, at the time of the mortgage, pledge, or purchase, the mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of the liens. A similar exception is provided by present law in the case of the purchasers of motor vehicles who are without notice or knowledge of the lien at the time of acquiring possession of the motor vehicle. In the discussion of the general tax lien above, the exceptions with respect to securities and motor vehicles are referred to as "superpriorities." In addition, in the case of the general tax lien, eight other categories of superpriorities are added by the bill. These eight categories are also added by the bill as exceptions in the case of the special liens for estate and gift taxes. An exception is also provided for a mechanic's lien and for interest and expenses attributable to a lien or security interest to the extent these interests or expenses under local law are treated as a part of the lien or security interest itself. Both the mechanic's lien and the priority for interest and expenses are the same exceptions as are provided by the bill with respect to the general tax lien provision.

C. CERTIFICATES OF RELEASE OF LIENS (SEC. 103 OF THE BILL AND SEC. 6325 OF THE CODE)

Present law provides the conditions under which a tax lien may be released and property may be discharged from the lien. The bill amends these provisions to provide new rules for the discharge of property, to authorize the subordination of tax liens in certain cases, to provide a procedure for the issuance of certificates of nonattachment of a tax lien, and to provide new rules relating to the legal effect of the various certificates issued under this provision.

(1) Discharge of property (sec. 6325(b) of the code)

Present law permits the Internal Revenue Service to issue a certificate of discharge of property subject to a Federal tax lien if (1) the fair market value of the property remaining subject to the lien is at least double the amount of the unsatisfied tax liability, or (2) the Internal Revenue Service is paid the value of the Government's interest in the property or determines that this interest has no value. In determining "value" for purposes of the latter rule, present law provides that "fair market value" is to be used. The bill substitutes the single word "value," so the Internal Revenue Service may take into account "forced sale value," as well as other values, as an alternative to "fair market value," in appropriate cases.

The bill also authorizes the Internal Revenue Service to issue a certificate of discharge where property subject to a tax lien is sold and, under an agreement with the Internal Revenue Service, the proceeds from the sale are to be held as a fund subject to the liens and claims of the United States in the same manner, and with the same priority, as the liens and claims on the discharged property. This new procedure should aid in the disposition of property where a dispute exists among competing lienors, including the United States, concerning their rights to specific property.

(2) Subordination of lien (sec. 6325(d) of the code)

The bill adds a new provision authorizing the Internal Revenue Service to issue certificates subordinating a tax lien to another interest where there is paid over to the Internal Revenue Service an amount equal to the amount with respect to which the tax lien is subordinated. Certificates subordinating a tax lien to another interest may also be issued where the Internal Revenue Service believes that the subordination of the tax lien to another interest will ultimately result in an increase in the amount realized by the United States from the property subject to the lien and will aid in the collection of the tax liability.

Both of these rules permitting subordination of tax liens are designed to facilitate collection of delinquent tax liabilities by providing more flexible procedures. In the first case, since the tax lien is being subordinated only to the extent the United States receives, on a dollar-for-dollar basis, an equivalent amount, the U.S. interest cannot in any event be injured and a new procedure for collecting taxes is made available. Permitting a Federal tax lien to be subordinated to another interest where the Internal Revenue Service believes this will ultimately aid in the collection of the tax is designed to give the Service flexibility so that, for example, funds may be borrowed to increase the value of the property subject to the tax lien. This may occur, for example, in the case of a crop which needs harvesting and without

which the tax lien of the Government has little or no value. It is intended that this authority will be used by the Service under conditions similar to those under which an ordinary, prudent businessman would subordinate his rights in a debtor's property in order to secure additional longrun benefits.

(3) Nonattachment of lien (sec. 6325(e) of the code)

The bill adds a new provision to the law codifying the present administrative practice of the Internal Revenue Service of issuing certificates of nonattachment of a tax lien on property where there has been confusion, such as because of the similarity of the name of an individual whose property is not subject to a tax lien and the name of an individual whose property is subject to a tax lien.

(4) Effect of, and procedures for filing, certificates (sec. 6325 (f) and (g) of the code)

Present law provides that where a certificate of release of a tax lien, or a certificate of discharge of property, is issued, the certificate is to be conclusive that the tax lien referred to is extinguished or that the property is discharged from the tax lien. The bill adds similar rules in the case of certificates of subordination and certificates of nonattachment, specifying that where these certificates are issued they are conclusive that the lien or interest to which the tax lien is subordinated is superior to the tax lien, or that the lien does not attach to the property of the person referred to in the certificate.

The bill also makes provision for the revocation of certificates of release or nonattachment in certain cases. It provides that these certificates may be revoked and the Federal tax lien reinstated where the certificate of release or nonattachment is issued erroneously or improvidently, or if the certificate of release is issued in connection with a compromise which has been breached (where the period of limitations on collection of the underlying tax liability has not expired). Where a certificate is revoked, the tax lien is reinstated and has the same effect as a new general tax lien.

The bill also provides that where a certificate of discharge has been issued, in those cases where the taxpayer disposes of property, if he subsequently reacquires the property, the certificate thereafter is to have no effect and the tax lien thereafter is to apply in the same way as in the case of after-acquired property generally.

Provision also is made in the bill to permit the public recording of all certificates and notices referred to above. If the certificate or notice may not be filed in the office designated by State law with respect to the notice of lien, it is to be filed in the office of the clerk of the appropriate U.S. district court.

D. SEIZURE OF PROPERTY FOR COLLECTION OF TAXES (SEC. 104 OF THE BILL AND SECS. 6331–6343 OF THE CODE)

Under present law, the Internal Revenue Service may levy upon the property of a delinquent taxpayer to collect the amount due. This levy may take the form of distraint and seizure by any means. Present law sets forth various procedures with respect to the levy, property exempt from the levy, the procedures to be followed in the case of the sale of seized property, and the application of the funds received from the sale. The bill makes a series of modifications in

this levy procedure designed to remove both problems faced by the taxpayer and problems faced by the Government under current law. These are set forth below.

(1) Effect of levy (sec. 6331(b) of the code)

In the provision of present law authorizing the Internal Revenue Service to levy upon the property of a taxpayer who owes delinquent taxes the bill adds a sentence specifying that this right to levy extends only to property of the taxpayer and in the possession of the person on whom the levy is made, or obligations to the taxpayer of the person on whom the levy is made which are existing at the time of the levy. The bill intends to make it clear, for example, that if a levy is made upon the bank account of a delinquent taxpayer and the bank surrenders the balance in the account at the time the levy is made, this levy has no effect upon subsequent deposits made in the bank by the taxpayer. It is intended that these may be reached only by subsequent levies.

(2) Life insurance and endowment contracts (sec. 6332(b) of the code)

Under present law, when the Government seeks to collect a taxpayer's rights in a life insurance or endowment contract which has not matured, the Government must proceed by means of a foreclosure suit against the taxpayer's total rights in the contract. This is necessary because the courts have held that to permit the Internal Revenue Service to seize the cash loan value of a policy without judicial foreclosure would, in effect, authorize it to alter an existing contractual arrangement between the taxpayer and the insurance company. However, a foreclosure suit has disadvantages both from the standpoint of the Government and the standpoint of the taxpayer. From the Government's point of view, a foreclosure suit is a cumbersome way of collecting the taxpayer's rights in the policy; from the taxpayer's point of view, such a suit is unfortunate because, when successful, it completely eliminates the insurance coverage. This is expecially unfortunate if the taxpayer becomes uninsurable between the time the policy is issued and the time of the tax lien foreclosure or if (because of greater age) the premium payments required for a new policy are substantially higher than for the old.

As an alternative procedure to the foreclosure suit, the bill permits the Government to levy against the cash loan value of the policy. This alternative procedure generally is more desirable both from the standpoint of the Government and from the standpoint of the insured. For the Government, this is an easier method of collection than a foreclosure suit. For the taxpayer, this makes it possible to continue the policy in force by transferring it to either a beneficiary or someone else who pays the subsequent premiums and interest on policy loans, including those loans resulting from the Government levy.

Under the new procedure set forth in the bill, where the Government levies on the cash loan value of the contract, the insurance company generally must pay this cash loan value over to the Goverment 90 days after the levy. However, the amount to be paid over is increased (above this cash loan value) for any advances made to the insured after the insurance company has actual notice or knowledge of the tax lien. An exception to this, however, is provided for advances made automatically to keep a policy in force; these need not be added to the payment where they are provided for in a contract

entered into before the insurance company has notice or knowledge of the lien.

The 90-day period before the company is to pay the cash loan value (with any appropriate adjustments) to the Government allows a period of time for the insured to meet his tax liability by other means. In this regard, it is understood that a procedure is to be worked out whereby the Internal Revenue Service is to inform the insurance company before the end of the 90-day period of amounts received in payment of these tax liabilities during the interval.

Your committee believes that this new levy procedure with respect to the cash loan value of insurance policies will both facilitate Federal tax collections and, at the same time, aid delinquent taxpayers and their beneficiaries. Nevertheless, this alternative procedure is not intended to eliminate the Government's right to make use of foreclosure suits with respect to these policies where it still deems this appropriate or necessary.

(3) Enforcement of levy (sec. 6332(c) of the code)

Present law provides that a person who fails or refuses to surrender property levied upon is personally liable to the extent of the value of the property involved, or to the extent of the underlying tax liability, if less. Because this amount is designated as a "penalty," there is some confusion as to whether an amount collected in this manner is properly credited against the tax liability of the person with respect to whom the levy is made.

The bill deletes the word "penalty" in the heading of this provision and adds specific language making it clear that the amount collected under this provision is to be credited against the delinquent tax liability. This makes it clear that an amount collected from the holder of the property under this provision is not a "penalty," but rather a collection of part or all of the tax liability.

However, your committee believes it appropriate to provide a penalty where the person fails or refuses to surrender property without reasonable cause. As a result, the bill provides for a civil penalty, equal to 50 percent of the amount recoverable, where the holder of the property fails or refuses to surrender it without reasonable cause. In this regard, it is intended that a bona fide dispute over the amount owing to the taxpayer (by the property holder) or over the legal effectiveness of the levy itself is to constitute reasonable cause under this provision.

(4) Effect of honoring a levy (sec. 6332(d) of the code)

The bill adds a new provision to the law making it clear that where a holder of property honors a levy with respect to a delinquent taxpayer and surrenders the property to the Government, he is discharged from any obligation or liability to the taxpayer with respect to this property. This includes cases where the Government levies on property under an assessment which is incorrectly determined. The bill also provides that where an insurance company honors a levy with respect to a life insurance or endowment policy, the company is to be discharged to the extent of any obligation or liability, not only with respect to the insured, but also with respect to any beneficiary under the policy.

These new provisions are not intended to remove the liability of a property holder to a third party who owns the property where the

holder mistakenly surrenders the property to the Internal Revenue Service. However, where there is a surrender of this property, there is provision for administrative relief, or the person involved may bring suit to recover the property.

(5) Property exempt from levy (sec. 6334 (a) of the code)

Present law lists five types of property which, either in whole or in part, are exempt from levy for the collection of delinquent taxes. These categories include wearing apparel and school books; fuel provisions, furniture, and personal effects; books and tools of a business; unemployment benefits; and undelivered mail.

The bill adds two new categories of property exempt from levy. It exempts from levy annuity or pension payments under the Railroad Retirement Act, benefits under the Railroad Unemployment Insurance Act, pension payments received by those whose names are on the Medal of Honor Roll of the Army, Navy, Air Force, and Coast Guard, and annuities based upon retired or retainer pay paid under the retired serviceman's family protection plan. It also exempts from levy amounts paid as workmen's compensation (including amounts payable with respect to dependents) under the laws of the United States, any State, the District of Columbia, or Puerto Rico.

(6) Publication of notice of sale (sec. 6335(b) of the code)

Present law requires the Treasury Department to publish a notice of the sale of seized property in a newspaper published within the county where the property is seized. Because in recent years there has tended to be a reduction in the number of newspapers published in suburban and rural counties, it frequently happens that the only newspapers of wide circulation within these counties are those published outside of the counties in nearby metropolitan areas. To permit effective publicity to be given to tax sales in areas such as these, your committee's bill amends the law to provide, as an alternative to the present provision, that notice of these sales may be published in a newspaper generally circulated within the county in which the property is seized.

(7) Redemption of property by taxpayers (sec. 6337(b) of the code)

Where real property which is seized by the Government for delinquent taxes is sold, present law allows the owner (or others acting on his behalf) one year from time of sale to redeem the property by paying the purchaser the amount paid at the tax sale, plus interest of 20 percent per year.

While a reasonable period of time for redemption in these cases is desirable, nevertheless, such a long redemption period tends to unnecessarily depress the price which potential purchasers are willing to bid for property at these sales. Your committee's bill has, therefore, reduced by approximately two-thirds, or to 120 days, the period during which owners (or others acting on their behalf) may redeem their property sold at tax sales by the Government.

As is indicated subsequently, the same reduction in time is provided by the bill (in sec. 201) for the Government where it redeems real property on which it has a tax lien which has been sold in a foreclosure sale by a creditor whose interest is superior to that of the Government.

(8) Preparation of deed (sec. 6338(c) of the code)

Present law provides that where real property is declared purchased by the United States at a tax sale, the Treasury Department is to

execute a deed for the property "after its preparation and the endorsement of approval as to its form by the U.S. attorney for the district in which the property is situated." Then the Treasury Department is to have the deed duly recorded in the proper registry of deeds. The bill relieves the local U.S. attorneys of the requirement of preparing, and endorsing the form of, these deeds.

(9) Effect on junior encumbrances (sec. 6339 of the code)

Where, after a tax sale by the Government, a certificate of sale for personal property or a deed to real property is given, the courts have held that this discharges this property from all liens, encumbrances, and titles over which the tax lien has priority. Your committee's bill places this rule in the Internal Revenue Code.

(10) Application of proceeds of levy and sale (sec. 6342 of the code)

Present law provides that funds collected by levy and sale procedure are to be applied, first, to meet the expenses of the levy and sale; second, to meet the tax liability on the seized property; third, to meet the liability with respect to which the levy is made; and, finally, any surplus proceeds remaining are payable to the person legally entitled to them.

Although this provision presently relates only to amounts realized by the Government in connection with levy proceedings, subsequently in this bill, provision is made for the United States to redeem real property in appropriate cases where other interests have priority and then to sell this property to third parties. Your committee's bill provides that funds realized by the Government from these sales to third parties are to be applied in the same manner as in the case of funds realized from levy proceedings.

(11) Return of property after wrongful levy (sec. 6343 of the code)

Under present law, the Treasury Department is authorized to release a levy upon property where it is determined that this action will facilitate the collection of the tax liability. The bill adds a provision dealing with cases where property has been wrongfully levied upon. This usually occurs where there has been a mistake as to the ownership of the property.

The bill provides that the Treasury Department, where it determines property has been wrongfully levied upon, may return either that specific property, an amount of money equal to the amount of money levied upon, or an amount of money equal to the amount received by the Government from the sale of the property.

Where specific property is returned, it may be returned at any time. Where money is returned, it is to be returned within 9 months after the date of the levy. In those cases where money is specifically identifiable (such as a coin collection which may be worth substantially more than its face value), it is contemplated that this money is to be treated as specific property and, wherever possible, this specific property is to be returned.

Where seized property has been declared sold to the United States, because no bidder at the sale is willing to meet the minimum price, then the minimum price is to be treated for purposes of this provision as the amount received from the sale. This is not intended, however, to prevent the return of the property itself, where it still is in the hands of the Government. Where the property is resold by the United

States for greater than the minimum price, then the amount actually received from the resale (rather than the minimum price) is to be treated as the amount received in the initial tax sale.

E. LIABILITY OF LENDERS, ETC., FOR WITHHOLDING TAX (SEC. 105 OF THE BILL, SEC. 3505 OF THE CODE, AND SEC. 1 OF THE MILLER ACT; 49 STAT. 793)

(1) Liability where payments are made, or supplied, by lenders, etc. (sec. 3505 of the code)

Under present law, only "employers" are liable for income, social security, and railroad retirement taxes required to be withheld and deducted from wages. There are cases, however, where persons other than the employers directly, or indirectly, pay the wages. Where this occurs, problems have arisen because, in some instances, these other persons have paid employees only the "net" wages and have not paid, either to the employees or to the Government, the withholding taxes due the Government. Under current law in these cases the employees receiving the net wages receive credit for the taxes required to be withheld, whether or not the Government is paid the amount of these taxes. While the employers in these cases are liable for the payment of the withholding taxes, they are likely to be without financial resources and, as a result, recourse against them may well be fruitless. Under current law, recourse cannot be taken against the third persons who directly or indirectly paid the net wages since they are not "employers" and, therefore, are not liable for the tax.

Your committee believes that where third persons finance employers' payrolls—subject to the conditions set forth below—they should be liable for the withholding taxes. It sees no reason for distinguishing between the portion of the total wages which is owed and should be paid to employees (the "net" wages), and the portion of the wages which is owed, and should be paid to the Government in the form of withholding taxes. These taxes are, in reality, a portion of the employee's wages for which he is given credit in the computation of his own tax liability; the fact that this portion of the wages is payable directly to the Government does not alter its basic nature.

Third persons who pay wages directly to employees ordinarily have full access to payroll information and, therefore, have essentially the same ability to determine the amount of wages due, and control over the funds available for payment, as is usually true in the case of employers. Therefore, no administrative problems are expected in these cases by holding the third parties liable for withholding taxes.

Third parties who specifically finance payrolls, although not paying employees directly, also are often in a position similar to that of employers. This appears to be true in those cases where they have actual notice or knowledge that the employers do not intend to, or are unable to, pay the amount of withholding taxes due the Government. Therefore, in these cases also it would appear practical for these third parties to account for the withholding taxes to the Government.

For the reasons indicated above, your committee has added a new provision to the law making lenders liable for the payment of withholding taxes in the type of cases referred to above.

(*a*) *Liability where direct payments are made.*—Where a lender, surety, or other person directly pays wages to employees of another, the bill provides that he is to be personally liable for the withholding taxes, including not only income tax withholding, but also withholding for purposes of the social security and railroad retirement laws. The reference to "other person" in this provision is intended to include anyone similar to a lender or surety who pays the wages of employees of another out of his own funds; it is not intended to include a person who is acting only as agent of the employer or as agent of the employees (such as a union agent).

This provision does not relieve an employer from his responsibilities with respect to withholding taxes. His responsibilities continue, even though a lender, etc., may be paying his employees' wages. The liability of the lender in such a case is to pay the taxes only where the employer does not do so. Moreover, in any event, the employer is obligated to file an employer's tax return and comply with other requirements imposed on employers generally.

In those cases where a lender, etc., is required to pay to the Government withholding taxes, the Treasury Department is to provide appropriate schedules, forms, etc., where necessary, to assist him in determining the amount of his obligation. This is to include the supplying of information necessary for the Government to determine on what employee's behalf the payments are being made.

A lender, etc., who pays withholding taxes as a result of this provision (who is not the "employer") is not liable for the employer's portion of payroll taxes.

(*b*) *Liability where a lender, etc., supplies funds to an employer for the purpose of paying wages.*—The bill provides that if two conditions exist, a lender, etc., is to be personally liable for any unpaid withholding taxes even though he does not himself directly pay the wages of employees of the employer (the borrower). First, for this to be true, the lender, etc., must know that the funds he advances are to be used specifically for the payment of wages. This does not include an ordinary working capital loan even though the lender, etc., knows that part of the funds may be used to make wage payments in the ordinary course of business. Second, for this provision to apply, the supplier of the funds must have actual notice or knowledge that the employer does not intend to, or will not be able to, make timely payment or deposit of the withholding taxes. The burden of establishing actual notice or knowledge in such cases is on the Government.

The liability of the lender, etc., under this provision may not in any event exceed 25 percent of the amount he supplies the employer for the specific purpose of paying wages. Where a supplier of funds is liable for withholding taxes under this provision, his liability (with the exception of the fact that the amount involved is limited to 25 percent of the funds supplied) is the same as that of a lender who pays the wages directly. He also is subject to the same requirements as to the furnishing of information, etc.

(*c*) *Effect of payment by lenders, etc.*—Under the bill, payments by the lender of withholding taxes reduces the liability of an employer. Similarly, payments by an employer of the withholding taxes reduces the liability of the lender, etc.

(2) *Bonds on public works contracts (sec. 1 of the Miller Act; 49 Stat. 793).*

In the cases discussed above, sureties can protect themselves against any losses attributable to withholding taxes by including this risk of liability in establishing their premiums, and lenders by their including the amounts in their loans and taking adequate security. Where they do so, losses now borne by the Government will fall (as it should) on the employers in the form of a larger bonding or other fee or cost they must pay. Since the withholding taxes are, in true character, a part of the wages, it seems only appropriate that this cost be borne by the employers in the same manner as is true of the net wage costs. Because of this, your committee has concluded that, in the case of a contractor having a public works contract with the Federal Government, it is appropriate that the performance bond required by the Government specifically provide coverage for the withholding taxes payable by the contractor in carrying out the contract. The bill amends the Miller Act to achieve this result.

Under the bill, a surety is obligated to pay the withholding taxes only if the Government gives him a written notice of the contractor's failure to pay the taxes. Separate notices are required for each taxable period. The Government must give the surety notice of a contractor's failure to pay the withholding taxes within 90 days after the contractor files his return, or, if the contractor fails to file this return, files it late, or obtains an extension of time for filing, the Government must in any event give the surety this notice within 180 days of the time the return was first required to be filed. In addition, the Government, if it is to bring suit for the failure on the part of the surety to pay the withholding taxes, must do so within 1 year of the time the notice is given to the surety of the unpaid tax liability.

F. SUSPENSION OF RUNNING OF PERIOD OF LIMITATION (SEC. 106 OF THE BILL AND SEC. 6503 OF THE CODE)

Generally, under present law, a tax may be collected by the levy procedure, previously discussed, or by a proceeding in court, at any time within 6 years after the assessment of the tax, or a longer period of time if agreed to by the Treasury Department and the taxpayer or by reason of suspending the running of the period. The running of this period of limitations on collections, however, under present law, is suspended where the assets of a taxpayer are in the custody or control of a court and for 6 months thereafter except in the case of an estate of a decedent or of an incompetent. Also the running of the period of limitations, under present law, is suspended for any period that collection is hindered because the assets of the taxpayer are out of the country. The bill modifies these two exceptions to the running of the statute of limitations. It also provides for the suspension of the period of limitations in another type of situation; namely, where the Government erroneously holds the property of a third person. These changes are discussed below.

(1) *Assets of estate of a decedent or of an incompetent (sec. 6503(b) of the code)*

As indicated above, the period of limitations is generally suspended where the assets of a taxpayer are in the control or the custody

of a court; however, under present law, the statute continues to run in the case of the estate of a decedent or of an incompetent. The statute generally is suspended where assets are in the control or custody of a court because during this time they are not subject to administrative collection procedures. However, it appears that this reason applies equally well in the case of the estate of a decedent and in the case of an incompetent.

For the reason given above, the bill provides for the suspension of the running of the period of limitations on collections in the case of an estate of a decedent and an incompetent during the period their assets are in the control or the custody of a Federal or State court.

(2) Period taxpayers are outside the country (sec. 6503(c) of the code)

In addition to the staying of the period of limitations while the assets of a taxpayer are in control or the custody of a court, present law also provides for the suspension of this period of limitations where collection of the tax is hindered or delayed because a taxpayer's property is outside of the United States.

This rule has been difficult to apply both because of problems in making the determination as to whether collection has been "hindered or delayed" because property is outside of the country and also because of the factual problem in knowing when property is outside of the country and for precisely how long.

To remove these problems, the bill provides for the suspension of the period of limitations during the period of the taxpayer's absence from the country rather than that of the property. It is believed that the collection of the tax is most likely to be hindered during the period of a taxpayer's absence. However, there are administrative problems in keeping track of short periods of time the taxpayer may be out of the country. The bill meets this problem by not suspending the running of the period of limitations except when the taxpayer is continuously out of the country for 6 months or more. To be sure that the Government has an opportunity to collect the tax after his return, it is provided that in any event, the period is not to expire (where the taxpayer has been out of the country for 6 months or more) until 6 months after the taxpayer's return to the country.

(3) Property of third persons wrongfully held by the Government (sec. 6503(g) of the code)

Under present law, the running of the period of limitations with respect to a taxpayer is not suspended where the Government erroneously holds the property of a third person. In a situation of this type the Treasury Department normally halts its collection procedures in the belief that the taxpayer's liability has been satisfied. On occasion where this has occurred, the taxpayer has waited until the period of limitations has run and then helped the third party recapture his property after the Government had no recourse, as far as the taxpayer was concerned.

Your committee believes that it is undesirable to encourage actions of the type described above. For that reason, the bill provides that the running of the period of limitations on collections is to be suspended during the period the Treasury Department holds property of a third person wrongfully seized or received, and for 30 days afterward.

The suspension of the period of limitations under this provision begins at the time of the wrongful seizure or receipt of the property by

the Government. It ends 30 days after the Treasury Department determines the levy was wrongful and returns the property, or if the third party goes to court, it ends 30 days after the entry of a final judgment to the effect that the levy was wrongful.

Where the period of limitations is suspended under this provision, it is suspended only as to that part of an assessment equal to the amount of money or the value of specific property which initially has wrongfully been taken from a third party and subsequently is returned to him. This amount or value is to be determined as of the date of return.

G. PROCEEDINGS WHERE UNITED STATES HAS TITLE TO PROPERTY (SEC. 107 OF THE BILL AND SECS. 7402 AND 7403 OF THE CODE)

(1) Action to quiet title (sec. 7402(e) of the code)

Under present law, the United States has the right to acquire title to property through the enforcement of a Federal tax lien, but it is not clear, at the present time, that it has authority to bring action to quiet title to property which it has acquired through the enforcement of the tax lien. This uncertainty as to whether the Government has the right to bring action to quiet title hinders collection efforts since, unless the Government can give clear title to property, the marketability of property is severely limited, and the Government is likely to receive substantially less than the true value of the property in any subsequent sale.

For the reasons indicated above, your committee's bill gives the Government express authority to bring an action to quiet title to property it has acquired through the enforcement of a tax lien. Jurisdiction in cases of this type is given to the Federal district courts.

(2) Sale bids (sec. 7403(c) of the code)

Where property is sold at a tax lien foreclosure sale, the Internal Revenue Code contains no specific authority authorizing the Federal Government to bid at these sales where it believes that less than full consideration is being offered for the property. Such authority is contained elsewhere, however, in the public statutes (see sec. 195 of title 31 of the United States Code).

It is desirable for the Federal Government to bid in property to prevent its sale at distress prices in order to assure that the Government receives the full value of the property sold or the amount of the Government's tax claim, as well as to protect the interests of the delinquent taxpayer whose property is being sold.

For the reason indicated above, the bill codifies the rule that where the Government brings an action to enforce a tax lien, the Government can bid on the property where the Government holds a first lien. The amount which it may bid under the bill is limited to the amount of its lien, plus selling expenses. Whether or not the Government exercises this authority to bid within the limit set forth in the bill is a matter within the discretion of the Treasury Department.

H. INTERVENTION BY UNITED STATES (SEC. 108 OF THE BILL AND SEC. 7424 OF THE CODE)

Under present law, some questions have arisen as to whether the Government can intervene in a court proceeding to assert a tax lien against property. The Government is not expressly authorized to do so, and the opinions of the courts which have considered the issue are divided.

The absence of express authority for the Government to intervene to assert a tax lien has resulted in the Government attempting to achieve the same result by other means, such as by bringing a separate action to assert its lien.

The bill grants the Government authority to intervene in a court proceeding to assert a tax lien against property to avoid the result described above. In these cases where the Government intervenes, the same procedural rules, to the extent applicable, are to apply as where the Government is initially joined properly as a party. Where the Government's application to intervene is denied, the proceedings are to have no effect on the Government's tax lien on the property. This is consistent with the results which follow where the Government is not joined as a party.

I. DISCHARGE OF LIENS HELD BY UNITED STATES (SEC. 109 OF THE BILL AND SEC. 7425 OF THE CODE)

Under present law, a junior Federal tax lien may be discharged on foreclosure of a senior security interest. Such foreclosure may occur in a plenary judicial action, or, under the law of some States, by nonjudicial foreclosure pursuant to a power of sale contained in the senior security instrument. In addition, in some States, foreclosure of a senior security interest may be accomplished by sale of the property by a judicial officer pursuant to a judgment entered under a "confession of judgment" signed by the debtor (typically in the security interest instrument itself). Where State law so provides, a junior Federal tax lien may be extinguished without the United States either being made a party to the proceeding or having any actual notice. As a result, under current law tax liens are sometimes extinguished without the United States having actual notice of the proceedings, under circumstances where it is not possible for the Internal Revenue Service to take steps to protect the United States in the collection of its tax revenues.

Where there is a plenary judicial proceeding and the Government, as a junior lienor, must be joined for its interests to be discharged in the proceeding, the present procedure works well. However, in other cases where the interests of junior lienors may be eliminated without notice, it appears that the interests of the Government are not presently sufficiently protected. Although legitimate local considerations may preclude requiring the Government (in other than plenary proceeding) to be joined as a party for its interests under a tax lien to be discharged, there does not appear to be any reason why in these cases there should not be a timely notice of the proceedings to the Government where notice of its tax lien is on file. The requirement of notice gives the Government an opportunity to

review its position and determine the appropriate action without placing an undue burden on a foreclosing creditor.

As explained below, the bill adds a new provision to the internal revenue laws requiring the Government to be made a party in a plenary proceeding to discharge a tax lien. The bill also makes provision for a timely notice to the Government where it has the status of a junior lienor and there is no plenary proceeding.

(*1*) *Plenary foreclosure actions* (*sec. 7425*(*a*) *of the code*)

The bill provides that in a plenary judicial proceeding where the Government has properly filed notice of a tax lien before the proceedings commence, but the Government is not joined as a party in the court proceeding, a judgment as to the property is not to disturb a tax lien or claim of a tax lien of the Government on this property. The same result is to occur when the property is sold pursuant to the judgment; the lien on the property continues into the hands of the third person. Where the Government is joined in these proceedings no change is made by the bill in the present operation of local law.

Where a notice of tax lien is not filed before a plenary proceeding commences—even in those cases where the filing is not required, such as in the case of a special lien for estate and gift taxes—a judicial sale is to have the same effect with respect to a tax lien as local law provides with respect to such matters. One exception is provided to this rule: where the Government is not joined as a party and the sale discharges the tax lien, the Government may still assert its claim against the proceeds of the sale at any time before the distribution is ordered with the same force as the lien had against the property sold.

(*2*) *Other foreclosure proceedings* (*sec. 7425*(*b*) *of the code*)

The bill provides that, in the case of all other foreclosure proceedings, where timely notice of the proceedings is given to the Government, the Government's claim to property under a tax lien is to be discharged in the manner provided by local law.

Where foreclosures covered by this provision are made without proper notice to the Government, the bill provides that this does not affect the Government's claim under a tax lien (as where the Government is not joined in a judicial foreclosure). In these cases, the Government's claim continues against the property into the hands of a third party. On the other hand, where notice of the Government's claim under a tax lien is not filed (even in those cases where filing is not required), or where the Government is notified of the proceeding, a sale has the same effect on the claim as local law provides with respect to similar claims. (This is the same result as where the Government is not joined as a party in a plenary proceeding where its lien is not on file.)

(*3*) *Special rules* (*sec. 7425*(*c*) *of the code*)

In connection with the plenary and other foreclosure proceedings outlined above, the bill provides a series of rules which are to be followed. For the most part, these concern procedural matters. These can be summarized as follows:

(*a*) Under the bill for a notice of sale to be effective, it must be delivered to the Treasury Department at least 25 days prior to the sale.

(*b*) As previously indicated under the bill, the Government has the discretion to consent to a sale, free of its claim.

(c) Under the bill, where property is perishable, the 25-day notice rule referred to in (a) above is waived and the property may be sold free of the Government's claim as long as notice is given the Government at any time prior to the sale.

Where perishable items are sold, under this provision, the proceeds of the sale must be held subject to the claim of the Government for 30 days and the Government's claim to these proceeds is the same as its claim to the items sold. Should the seller fail to hold the proceeds for the 30-day period, he is to be personally liable to the Government for its claim where the Government asserts its claim during the 30-day period to the extent of the net amount of the proceeds.

(4) *Redemption by the United States (sec. 7425(d) of the code)* As previously indicated, under the bill the Government is given the authority to redeem real property sold under other than plenary judicial proceedings where the sales were to satisfy a lien prior to a tax lien. The period of time for redemption in these cases is 120 days from the date of sale or the period allowable under local law, if longer. Where the Government exercises its right of redemption, it must pay the amount paid by the purchaser at the sale plus interest and expenses necessary to maintain the property from the time of sale. Procedures are set forth to be followed in preparing certificates of redemption for this purpose.

J. CIVIL ACTIONS BY PERSONS OTHER THAN TAXPAYERS (SEC. 110 OF THE BILL AND SECS. 7426, 6532 AND 7421 OF THE CODE)

Present law is quite limited in the extent to which it takes into account the rights of third parties in the procedures set out in the tax laws for the collection of taxes from a taxpayer. Under present law, for example, the United States cannot be sued by third persons where its collection activities interfere with their property rights. This includes cases where the Government wrongfully levies on one person's property in attempting to collect from a taxpayer. However, some courts allow suits to be brought against district directors of Internal Revenue where this occurs. Technically, these suits are not against the Government, but, in fact, the Government defends them and pays all costs, so that the effect is practically the same as if these suits were brought against the United States.

Another area in which present law does not adequately take into account rights of third parties are cases where the Government levies on a taxpayer's property and sells it for more than the taxes he owes. In these cases the taxpayer can bring a refund action against the Government for the surplus, but a third person who has a junior lien on a taxpayer's property (entitling him to part or all of these surplus proceeds) presently cannot sue to claim them. As a result, where the Treasury Department denies his claim to these proceeds, he is without a remedy against the Government.

Still another area exists where present law is relatively restrictive in dealings by the Government with third parties. There is no provision in present law authorizing the Treasury Department to enter into agreements with taxpayers and third persons allowing property

subject to a tax lien to be sold free of the lien pending a determination of who is entitled to the proceeds.

Your committee believes where the Government levies on property which, in part at least, a third person considers to be his, he is entitled to have his case heard in court. While, under present law, some courts in effect permit this result by allowing suits to be brought against district directors, your committee believes this result should be generalized. In addition, your committee believes it is more appropriate, instead of bringing the actions against district directors, to bring them directly against the Government. Your committee also believes that a person who claims an interest in surplus proceeds realized by the Government when it sells property to satisfy a tax liability is entitled to judicial consideration of his claim if it is denied by the Treasury Department. Once a taxpayer's liability is satisfied, the Government's retention of surplus proceeds is wrongful as to the person legally entitled to them. In addition, since this bill authorizes the Treasury Department to enter into agreements with taxpayers and others to sell property pending a determination of who is entitled to it, your committee believes that claimants to the property should be permitted to join the Government in an action where they are unable to resolve this matter.

For the reasons given above, your committee's bill permits wrongful levy actions and actions for surplus proceeds to be brought against the Government by nontaxpayers. Similarly, it allows anyone, including taxpayers, to bring an action for the distribution of substituted sale proceeds. These are all actions in which the taxpayer's tax liability is not open to question.

(1) Actions permitted (sec. 7426(a) of the code)

The bill makes provisions for three new types of actions all of which may be brought only in Federal district courts. First, where a person claims the Government wrongfully levied upon his property to satisfy the tax liability of another, the bill provides that he may bring suit against the Government. "Wrongful," as used here, refers to a proceeding against property which is not the taxpayer's. A person may bring suit under this provision once a levy is made.

Second, where a person (other than the taxpayer) claiming a junior interest in property also claims he is entitled to the surplus proceeds the Government realized on a sale of the property following a levy, the bill provides he may bring suit against the Government. "Surplus proceeds" are those in excess of the amount necessary to satisfy the tax liability giving rise to the levy and the expenses of the levy sale.

Third, where a person claims he is entitled to the proceeds of property once subject to a tax lien which is sold, under an agreement with the Government, to hold the proceeds instead of the property, the bill provides that he may join the Government to assert his claim to these proceeds. Any person, including the taxpayer, may bring suit under this provision, although, of course, for purposes of a suit under this provision, too, the assessment against the taxpayer is conclusively presumed valid.

(2) Forms of relief (sec. 7426(b) of the code)

Where a person brings a wrongful levy action, or an action claiming an interest in either surplus proceeds or substituted sale proceeds,

the relief the Federal district court can grant is limited to one of the four types described below.

First, the bill provides that a court can enjoin the Government from proceeding once it has levied, where it determines that a seizure or surrender of property under a levy, or a sale of property following a levy, makes injunctive relief appropriate. Injunctive relief is limited to cases where the court determines the Government's action is wrongful and, if completed, would irreparably injure the rights of another in the property which are prior to the rights of the Government. If this issue is decided in the person's favor, typically the injunction is either made permanent, where the Government does not have possession of the property, or is continued until the levy is released and the specific property is returned to the person.

Second, where a court determines the Government's levy is wrongful, the bill provides that the court can order the Government to return the specific property levied on, or award the person who brings the action a money judgment. Any relief under this provision is conditioned on a finding that the property levied on did not belong to the taxpayer. The bill provides that a court can order the Government to return property wrongfully levied on only where it is identifiable and still in the Government's possession. (Property under this provision includes money where identifiable, such as a coin collection.) Where the Government wrongfully levies on money, relief under this provision is limited to the amount of the money, and where the Government wrongfully levies on other property which is no longer in its possession, relief is limited to the amount the Government received from its sale. Where the Government was the purchaser of the property at the sale, this amount received from the sale is to be the minimum price at which the Government would have allowed the property to be sold, or, if more, the amount received by the Government when it later resold the property.

Third, where a court determines that the claim of a person is transferred from property to surplus proceeds remaining after the levy sale by the Government, the court can award the party (or parties) a judgment (or judgments) in an amount not in excess of the surplus proceeds the Government realized on the enforcement of its levy.

Fourth, where a court determines that a person's claim to property sold under an agreement providing for the proceeds to be substituted in their stead is valid, the bill provides that the court can award the person (or persons) a judgment (or judgments) in an amount not in excess of the substituted sale proceeds.

K. SALE OF PROPERTY ACQUIRED BY UNITED STATES (SEC. 111 OF THE BILL AND SECS. 7505(a) AND 7506(a) OF THE CODE)

Under present law the Government has express authority to sell personal property purchased by it at a sale following a levy. It does not have, however, express authority to sell personal property acquired by other means in the administration of the tax laws. Similarly, although the Government has express authority to administer and sell real property acquired by it under various procedures in the administration of the tax laws, it does not have express authority to administer and sell real property acquired by it by redemption.

Where the Government has acquired property as the result of redemption and other procedures, under the tax laws in practice it has had to administer it and, subsequently, to sell the property. Your committee believes it is appropriate for express authority for these actions to be contained in the revenue laws. This is particularly desirable for the future because with the redemption fund (see next provision) set up by the bill, the redemption procedure probably will be used more often in subsequent years.

For the reasons given above, your committee's bill amends existing law to make it clear that the Government's authority to administer and sell property it acquires in the administration of the tax laws extends to property acquired by redemption and other means.

L. FUND FOR REDEMPTION OF REAL PROPERTY BY UNITED STATES (SEC. 112 OF THE BILL AND SECS. 7809(a) AND 7810 OF THE CODE)

Under present law the Government can redeem real property on which it has a junior lien where the property is sold at a foreclosure sale brought by a holder of a senior lien. The bill extends somewhat the authority the Government has to redeem real property in certain cases where it is sold at foreclosures not involving plenary judicial proceedings. No fund for the purchase of redeemed property is authorized, however, and some question exists as to whether general appropriations can appropriately be used for this purpose.

By exercising its power of redemption the Government can purchase property sold at distress prices and resell the property at a profit. This profit, of course, is applied in satisfaction of the taxpayer's liability. In some instances this procedure is the only means by which the Government can collect taxes due. In all instances, however, the exercise of this power, where redeemed property is sold at a profit, inures to the benefit of delinquent taxpayers.

In view of these considerations, your committee believes the Government should exercise its power of redemption and for this reason the bill establishes a separate revolving fund out of which funds can be drawn for this purpose. It is anticipated that the proceeds on the resale of redeemed property will replenish the revolving fund so that additional appropriations will not be necessary.

The bill provides for the establishment of a revolving fund out of which the Government can draw funds to redeem real property. This fund is to be subject to the control of the Treasury Department and is without fiscal year limitation. The total authorization for the fund is $1 million. When redeemed property is resold, the proceeds of the resale, to the extent of the costs of redemption, are to be deposited in the fund. The remaining proceeds are, of course, applied in satisfaction of the taxpayer's liability. Any surplus is returned to the parties legally entitled to them.

M. EFFECT OF JUDGMENT ON TAX LIEN AND LEVY (SEC. 113 OF THE BILL AND SECS. 6322 AND 6502(a) OF THE CODE)

Under present law, it is not clear whether a lien arising from a tax assessment continues where the liability underlying the lien is reduced to judgment. One effect, if the lien does not continue where it is reduced to judgment, may be that the Government loses its priority

under the lien, vis-a-vis competing creditors, and takes a new priority as of the later date of the judgment. Another effect, if the lien does not continue after the judgment, may be that the Government cannot enforce the tax lien and collect under it, but must pursue collection under the judgment. There is also some question under present law of whether the entry of a judgment cuts off the Government's right to collect by levy, even though the normal 6-year period of collection on the tax assessment has not expired at the time the judgment is entered.

Your committee believes the entry of a judgment confirming an assessed tax liability should not cut back on the rights of the Government. Both the judgment and the lien arise out of the same tax liability, and it is intended that this liability continue until it is satisfied or becomes unenforceable by reason of lapse of time. Since the liability giving rise to the lien and that giving rise to the judgment is the same, your committee believes the Government's priority, vis-a-vis other creditors, should be the same under each. Moreover, since, in effect, the judgment merely confirms the validity of the lien arising out of the tax assessment, it is believed that the Government's right to foreclosure under the tax lien (as contrasted to the more cumbersome method of foreclosing under the judgment) should not be curtailed as the result of reducing the assessment to judgment. Your committee recognizes, however, there comes a time when it is inappropriate for the Government to collect by administrative levy action without court supervision.

For the reasons indicated above, your committee's bill amends existing law to provide that a tax lien is not merged into a judgment on the assessed tax liability. Under the bill, where a tax assessment is reduced to judgment, the lien continues until the underlying tax liability is satisfied or becomes unenforceable by reason of lapse of time. The bill also makes it clear that the Government's right to collect taxes due by administrative levy action is neither curtailed nor expanded by the judgment.

N. CONSENT OF UNITED STATES TO BE JOINED IN CERTAIN PROCEEDINGS (SEC. 201 OF THE BILL AND SECS. 2410 (a), (b), (c), AND (d) OF TITLE 28)

This section relates to judicial proceedings affecting property on which the United States has or claims a mortgage or other lien. Under present law the Government may be brought into a judicial proceeding as a party to quiet title to property or to foreclose a mortgage or other lien on property; it may not, however, be joined as a party in certain other judicial proceedings. The result is that where parties attempt to join the Government in cases other than the types previously described, the Government must move to dismiss the motion to join and, where it wants to assert its interest, it must petition to intervene or initiate a new proceeding.

Present law sets forth the pleading requirements for those actions where the Government may be joined as a party. This is so the Government will have notice of the reason it is being joined. Similarly, the statute spells out under what circumstances the relief granted to private parties in actions where the Government is joined is to affect the Government's interest. Thus, where a judicial sale is ordered in the proceedings, it is specified that the sale is to have the same effect

on the Government's interest as local law provides with respect to similar matters. The statute also gives the Government the right to redeem the property sold at the sale for reasons previously discussed in this report. It does not, however, contain rules for determining the redemption price.

Your committee believes the Government's consent to being joined as a party should be broadened to include those cases where experience has shown it is desirable for the Government to be a party in order to assert its interests. This also requires changing the present pleading requirements to be sure the Government will be informed of the reasons for its being joined in these actions. Similarly, in these new actions, a judicial sale may not always be the appropriate remedy. Experience has also shown that in order to obtain uniformity a rule for determining the amount the Government must pay where it exercises the right of redemption needs to be provided.

In accord with the reasons given above, the Government's consent to be sued is broadened to include "partition" and "condemnation" suits and "interpleader" suits and suits "in the nature of interpleader." Partition suits are those where persons with undivided interests in a parcel of property seek to have their undivided interests in the whole divided into separate interests in portions of the parcel. Condemnation suits are those brought by governmental (and quasi-governmental) units to acquire private property for the purpose of converting it to public use. Interpleader actions are those brought by persons holding property for the purpose of determining who is entitled to the property held.

The bill also makes two changes in present law with respect to the pleading requirements in those actions where the Government has consented to be joined as a party. The first change makes it clear that any pleading which attempts to join the Government as a party must refer to the Government's interest in the suit. Under present law the statute provides that only the complaint must refer to the Government's interest. The second change specifies the type of information (such as the name of the taxpayer whose tax liability gives rise to the Government's interest in the action, the district director's office involved, etc.) which must be contained in the pleading seeking to join the Government in actions involving liens under the internal revenue laws.

The bill provides that, generally, in suits where the Government is joined as a party, the judgment of the court is to have the same effect with respect to the discharge of the Government's interest as applicable local law provides with respect to similar matters. An exception is made where a sale is ordered to satisfy a lien junior to the Government; here, the Government's interest cannot be discharged without its consent, even if local law provides otherwise.

Under this provision, in the new types of suits in which the Government has consented to be sued, and in a quiet title action as well, the person bringing the suit does not have to request a judicial sale for the judgment of the court to have the effect of discharging the property from the Government's interest where local law so provides. In an action to foreclose a mortgage or other lien, on the other hand, the person must seek a judicial sale.

Changes are also made regarding the Government's rights where property is sold in actions where the Government is joined. First,

where the lien arises under the internal revenue laws, the provision cuts the period in which the Government may redeem the property from 1 year to 120 days or, if longer, the period allowed by applicable local law. This gives the Government a sufficient time to determine whether redemption is desirable. The second change the bill makes here is to add to the judicial code the exceptions to the right of redemption presently contained in separate Federal acts (such as the Housing Act of 1950). The last change the provision makes is that it authorizes the head of a department to delegate his authority to bid on property sold at one of these proceedings to satisfy a prior lien of the Government.

The bill also provides a formula for determining the price the Government must pay where it redeems property sold in proceedings where the Government is joined as a party (under this section), and where it is sold in foreclosures other than plenary judicial proceedings. The redemption price is to be the amount paid by the purchaser at the foreclosure sale plus interest at the statutory rate (6 percent) from the date of sale. Where the purchaser at the sale is the person whose lien is being foreclosed, the amount paid by him includes the amount of the debt underlying his lien to the extent that the lien is satisfied by the sale. Where the lien is fully satisfied, the purchaser is not to receive less than the amount due him at the time of sale. Where the lien attaches to other property, however, or where, after the sale, the purchaser still has the right to sue for the unpaid balance of the amount due him, the amount paid does not include this unpaid balance.

In addition to the price paid by the purchaser plus interest, in order to redeem property, the Government must pay, as part of the redemption price, the excess, if there is any, of any expenses incurred after the foreclosure sale in maintaining the property over the income from the property during this period. Where the property is not rented out but is used by the purchaser, the income includes the reasonable rental value of the property.

O. JURISDICTION AND VENUE IN CERTAIN CASES AGAINST UNITED STATES (SEC. 202 OF THE BILL AND SECS. 1346(e) AND 1402(c) OF TITLE 28)

Under present law, the Government cannot be sued where it wrongfully levies upon property, or in actions involving surplus proceeds or substituted sale proceeds. Therefore, present law contains no provision giving the Federal courts jurisdiction over actions of this type. Similarly, there are no venue provisions determining in what judicial district these actions may be brought.

Since under other provisions of this bill wrongful levy actions, and actions involving surplus proceeds and substituted sale proceeds, may be brought, courts must have jurisdiction over them and venue rules must be provided.

Your committee's bill, therefore, confers jurisdiction on the Federal courts over wrongful levy actions, and actions involving surplus proceeds and substituted sale proceeds. The Federal district courts have original jurisdiction over these actions.

As to venue, the bill provides that wrongful levy actions, and actions involving surplus proceeds and substituted sale proceeds, are to be

brought only in the judicial district where the property levied on is situated at the time of levy. Where the action does not arise out of a wrongful levy (such as in certain cases involving substituted sale agreements) the action is to be brought where the event giving rise to the lawsuit occurred.

P. EFFECTIVE DATE (SECS. 114 AND 203 OF THE BILL)

The bill provides, as a general rule, that the amendments made by the bill are to apply after the date of enactment. This is true regardless of when a lien or a title of the United States arose or when a lien or interest of any other person was acquired. However, the bill provides certain exceptions to this general rule as to the effective date for the provisions of the bill. They are as follows:

(1) The amendments made by the bill are not to apply in any case where the Government has, in effect, completed enforcement of its interest arising under a lien. Thus, the amendments are not to apply where the enforcement proceeding has reached the stage of a civil action or suit which has become final by judgment, sale, or agreement, before the date of enactment.

(2) The amendments are not to apply to any case where they would impair a priority of any person holding a lien or interest prior to the date of enactment; increase the liability of any person; or, shorten the time for bringing suit with respect to any transaction occurring before the date of enactment.

(3) The amendments imposing a liability on third persons who pay wages of employees of another or supply funds for the specific purpose of paying wages of the employees of another, are to apply only with respect to wages paid on or after January 1, 1967.

(4) The amendment requiring performance bonds on public works contracts to provide for the payment of withholding are to apply only to contracts entered into pursuant to invitations for bids made by the Government after June 30, 1967.

(5) Where a person has commenced a civil action to clear title to property under the present law (sec. 7424 which, in effect, is repealed by this bill), the action is to be determined in accordance with that section without regard to this bill.

III. TECHNICAL EXPLANATION OF THE BILL

SECTION 1. SHORT TITLE, ETC.

(*a*) *Short title*

Subsection (a) of section 1 of the bill provides that the bill may be cited as the "Federal Tax Lien Act of 1966."

(*b*) *Amendment of 1954 Code*

Subsection (b) of section 1 of the bill provides that, except as otherwise expressly provided in the bill, whenever in the bill an amendment or repeal is expressed in terms of an amendment to or repeal of a section or other provision, the reference is considered to be made to a section or other provision of the Internal Revenue Code of 1954.

Title I—Priority and Effect of Tax Liens and Levies

SECTION 101. PRIORITY OF LIENS

(*a*) *In general*

Subsection (a) of section 101 of the bill amends section 6323 of the code (relating to validity of tax liens against mortgagees, pledgees, purchasers, and judgment creditors) by replacing such section with a new section 6323. New section 6323 enlarges the categories of interests in and liens on property which are granted priority over the Federal tax lien. New section 6323 also provides new rules for refiling notices of tax lien at the end of the statutory 6-year period for collection of an assessed tax liability, and each subsequent 6-year period in which the outstanding liability is enforcible.

SECTION 6323. VALIDITY AND PRIORITY AGAINST CERTAIN PERSONS

(*a*) *Purchasers, holders of security interests, mechanic's lienors, and judgment lien creditors*

Under present law, when an assessment of a tax liability is made, a Federal tax lien arises in favor of the United States upon all property and rights to property, whether real or personal, belonging to the taxpayer. Section 6323 (a) of present law provides that a tax lien shall not be valid against (and, thus, not have priority over) a mortgagee, pledgee, purchaser, or judgment creditor until notice of the lien is filed. Under decisions of the Supreme Court a mortgagee, pledgee, or judgment creditor is protected at the time notice of the tax lien is filed if the identity of the lienor, the property subject to the lien, and the amount of the lien are all established at such time. See *United States* v. *City of New Britain*, 347 U.S. 81 (1954). Except as otherwise provided, subsection (a) of new section 6323 retains this basic rule of Federal law.

Section 6323(a), as amended by the bill, provides that the lien imposed by section 6321 (relating to lien for taxes) shall not be valid as against any (1) purchaser (as defined in sec. 6323(h)(6) of the code, as added by sec. 101(a) of the bill), (2) holder of a security interest (as defined in sec. 6323(h)(1) of the code, as added by sec. 101(a) of the bill), (3) mechanic's lienor (as defined in sec. 6323(h)(2) of the code, as added by sec. 101(a) of the bill), or (4) judgment lien creditor, until notice thereof which meets the requirements of section 6323(f) of the code (relating to place for filing notice; form, as added by sec. 101(a) of the bill) has been filed by the Secretary of the Treasury or his delegate.

The holder of a security interest has priority over a Federal tax lien if, at the time notice of the tax lien is filed, the security interest exists within the meaning of section 6323(h)(1). A security interest which comes into existence after a notice of a Federal tax lien is filed may be protected in accordance with the provisions of new subsections (c) and (d) of section 6323. The term "security interest" includes those interests which qualified as mortgages and pledges under existing section 6323(a). Your committee does not intend to diminish the protection afforded mortgages and pledges under existing law.

Section 6323(a), as amended, changes present law by including the interests of certain mechanic's lienors in the category of protected liens and interests. In addition, subsection (a) codifies the existing interpretation of the term "judgment creditor" by specifically describing such an interest as that of a "judgment lien creditor."

(*b*) *Protection for certain interests even though notice filed*

Under present law, a Federal tax lien is not valid, even though notice of the lien has been filed, as against a mortgagee, pledgee, or purchaser of a security, or certain purchasers of motor vehicles, if the mortgage, pledge, or purchase is made for an adequate and full consideration in money or money's worth and without notice or knowledge of the existence of the tax lien. New section 6323(b) provides that even though notice of a Federal tax lien has been filed, the tax lien shall not be valid in the two situations protected under present law, and in eight additional situations.

Securities.—Paragraph (1) of section 6323(b) provides that even though a notice of tax lien has been filed, the lien shall not be valid with respect to a security (as defined in sec. 6323(h)(4), as added by sec. 101(a) of the bill) either (A) as against a purchaser of such security who at the time of the purchase did not have actual notice or knowledge (as defined in sec. 6323(i)(1) of the code, as added by sec. 101(a) of the bill) of the existence of such lien; or (B) as against a holder of a security interest (as defined in sec. 6323(h)(1) of the code, as added by sec. 101(a) of the bill) who, at the time such interest came into existence, did not have such actual notice or knowledge. Section 6323(b)(1) is similar to present section 6323(c)(1) of the code (relating to exception in case of securities). For example, A purchases a security from B, the taxpayer, after a notice of tax lien has been filed, without actual notice or knowledge of the existence of such lien. A is protected, under the provisions of paragraph (1). If A thereafter sells the security to C, who at the time of such sale has actual knowledge of the existence of the lien, C is also protected as against the Federal tax lien.

Motor vehicles.—Paragraph (2) of section 6323(b) provides that even though a notice of tax lien has been filed, the lien shall not be valid with respect to a motor vehicle (as defined in sec. 6323(h)(3)), as against a purchaser of such motor vehicle if (A) at the time of the purchase, the purchaser did not have actual notice or knowledge of the existence of such lien, and (B) before the purchaser obtains such actual notice or knowledge, he has acquired possession of the motor vehicle and has not thereafter relinquished possession of the motor vehicle to the seller or his agent. Paragraph (2) maintains in effect the provisions of present section 6323(d)(1) of the code (relating to exception in the case of motor vehicles).

Personal property purchased at retail.—Paragraph (3) of section 6323(b) provides that even though a notice of tax lien has been filed, the lien shall not be valid with respect to tangible personal property purchased at retail, as against a purchaser in the ordinary course of the seller's trade or business, unless at the time of the purchase the purchaser intends such purchase to, or knows such purchase will, hinder, evade, or defeat the collection of any tax imposed by the provisions of the Internal Revenue Code. For example, a purchaser of a refrigerator who made his purchase at an ordinary retail outlet would

be protected, even though a tax lien outstanding against the seller had previously attached to the refrigerator and notice of the lien had been filed prior to the time the purchase was made. Although the protection may be available to a purchaser with actual notice or knowledge of the existence of the lien, the protection would not, however, be available if the purchaser intends his purchase to hinder, evade, or defeat the collection of any tax, or knows his purchase will achieve the same result.

Personal property purchased in casual sale.—Paragraph (4) of section 6323(b) provides that even though a notice of tax lien has been filed, the lien shall not be valid with respect to household goods, personal effects, or other tangible personal property described in section 6334(a) of the code (relating to enumeration of property exempt from levy) purchased, other than for resale, in a casual sale for less than $250, as against the purchaser, but only if the purchaser does not have actual notice or knowledge of either (A) the existence of the tax lien, or (B) that this sale is one of a series of sales. For example, the purchaser of a television set from his neighbor, who does not have actual notice or knowledge (1) that a tax lien has attached to the set or (2) that his purchase is one of a series of sales by his neighbor, will have priority over the tax lien, even though notice of the lien has been filed prior to the time the purchase is made.

Personal property subject to possessory lien.—Paragraph (5) of section 6323(b) provides that even though a notice of tax lien has been filed, the lien shall not be valid with respect to tangible personal property subject to a lien under local law securing the reasonable price of the repair or improvement of such property, as against a holder of such a a lien, if such holder is, and has been, continuously in possession of such property from the time his lien arose. For example, if local law gives an automobile mechanic the right to retain possession of an automobile he has repaired as security for payment of the repair bill, and the mechanic retains continuous possession of the automobile until his lien is satisfied, a tax lien which has attached to the automobile will not be valid to the extent of the repair bill, regardless of when notice of the lien is filed.

Real property tax and special assessment liens.—Paragraph (6) of section 6323(b) provides that even though a notice of tax lien has been filed, the tax lien shall not be valid with respect to real property, as against a holder of a lien on such real property if such lien is entitled, under local law, to priority over security interests in the real property which are prior in time, and such lien secures one of the three liabilities described in subparagraphs (A), (B), and (C) of section 6323(b)(6).

Subparagraph (A) of section 6323(b)(6) extends priority to the holder of a lien which secures the payment of a tax of general application levied by any taxing authority based upon the value of the real property. For example, the holder of a lien securing the payment of ad valorem real property taxes to which real property is subject will have priority over a Federal tax lien. Subparagraph (A) changes the result in *United States* v. *Buffalo Savings Bank*, 371 U.S. 228 (1963).

Subparagraph (B) of section 6323(b)(6) extends priority to the holder of a lien which secures the payment of a special assessment imposed directly upon real property by any taxing authority, if such assessment is imposed for the purpose of defraying the cost of any public improvement. Thus, the holder of a special assessment lien to

secure the payment of the cost of a new sewerline, sidewalk, or road paving to which the real property is subject has priority over a Federal tax lien.

Subparagraph (C) of section 6323(b)(6) extends priority to the holder of a lien which secures payment of charges for utilities or public services furnished to such property by the United States, a State or political subdivision thereof, or an instrumentality of any one or more of the foregoing. Thus, the holder of a lien to secure the payment of the cost of electric power or water supplied by a governmental entity to real property has priority over a Federal tax lien.

Residential property subject to mechanic's lien for certain repairs and improvements.—Paragraph (7) of section 6323(b) provides that even though a notice of tax lien has been filed, the lien shall not be valid with respect to real property subject to a lien for repair or improvement of a personal residence (containing not more than four dwelling units) occupied by the owner of such residence, as against a mechanic's lienor (as defined in sec. 6323(h)(2), as added by sec. 101(a) of the bill), but only if the contract price on the contract with the owner of the residence is not more than $1,000. Paragraph (7) gives a repairman who acquires a mechanic's lien under local law priority over a tax lien, even though notice of the tax lien has been filed, if the total contract price (including labor and materials) is $1,000 or less, and his contract is with the owner of an owner-occupied personal residence of not more than four dwelling units.

The application of the provisions of this paragraph are illustrated by the following examples.

Example 1: A notice of a Federal tax lien is filed with respect to the personal residence of A, the taxpayer. Thereafter, A enters into a contract with B to repair the roof of such residence. The total contract price, including labor and materials, is $800. B purchases roofing shingles from C for a price of $300. B completes the work and A fails to pay B the agreed price. B fails to pay C for the roofing shingles. Under local law both B and C acquire mechanic's liens on A's residence. The liens of both B and C have priority over the Federal tax lien.

Example 2: The facts are the same as in example 1, except that the contract between A and B is for a total price of $1,100. Since the contract price is in excess of $1,000, the Federal tax lien has priority over the mechanic's liens of both B and C.

Attorneys' liens.—Paragraph (8) of section 6323(b) provides that even though a notice of tax lien has been filed, the lien shall not be valid with respect to a judgment or other amount in settlement of a claim or of a cause of action, as against an attorney who, under local law, holds a lien upon or a contract enforceable against such judgment or amount, to the extent of the attorney's reasonable compensation for obtaining the judgment or procuring the settlement, However, an attorney has no priority with respect to a judgment or amount in settlement of a claim or of a cause of action against the United States to the extent that the United States offsets such judgment or amount against any liability of the taxpayer to the United States.

The tax lien is, therefore, not valid with respect to an attorney's claim against a judgment or fund resulting from the settlement of an administrative claim (such as a workmen's compensation claim) or a cause of action, to the extent the attorney, under local law, has a lien

or an enforceable contract against such judgment or fund. The priority granted to attorneys' liens is, however, limited to reasonable compensation for obtaining the judgment or settlement. Generally, reasonable compensation means the amount customarily allowed under local law for an attorney's services for litigating or settling a similar case or administrative claim. Nevertheless, reasonable compensation shall be determined on the basis of the facts and circumstances of each individual case.

In the case of claims or causes of action against the United States, the priority granted under paragraph (8) is not applicable to a judgment or other fund resulting from the successful litigation or settlement of an administrative claim or cause of action to the extent that the United States, under any legal or equitable right, offsets its liability under the judgment or settlement against any liability of the taxpayer to the United States. For example, the priority granted under paragraph (8) would not be applicable in a case like *United States* v. *Munsey Trust Co.*, 332 U.S. 234 (1947), which held that the United States may set off the amount due it for taxes against an amount owed by the United States to the taxpayer under a contract. Similarly, the priority granted by paragraph (8) would not be applicable to any amount the Secretary of the Treasury or his delegate credits against any liability of the taxpayer in accordance with section 6402 of the code (relating to authority to make credits or refunds).

Certain insurance contracts.—Paragraph (9) of section 6323(b) provides that even though notice of tax lien has been filed, the lien shall not be valid with respect to a life insurance, endowment, or annuity contract, as against the organization which is the insurer under such contract, at the points in time and to the extent described in subparagraphs (A), (B), and (C) of section 6323(b)(9). Paragraph (9) is applicable to matured contracts as well as unmatured contracts.

Subparagraph (A) of section 6323(b)(9) gives priority over a tax lien to the insuring organization at any time before such organization had actual notice or knowledge of the existence of the tax lien. For example, if an insurer makes a so-called policy loan on a life insurance policy after a notice of tax lien has been filed with respect to the property of the insured, the insurer would be protected as against the Federal tax lien if such insurer did not have actual notice or knowledge of the existence of the tax lien at the time the policy loan is made.

Subparagraph (B) of section 6323(b)(9) gives priority over a tax lien to the insuring organization even after such organization had actual notice or knowledge of the existence of such lien, but only with respect to advances (including contractual interest thereon, in accordance with the provisions of sec. 6323(e) (relating to priority of interest and expenses, as added by sec. 101(a) of the bill)) required to be made automatically to maintain such contract in force when such advances are made under an agreement entered into before such organization had such actual notice or knowledge. Thus, although an insurer will not have priority for so-called policy loans made after the insurer has actual notice or knowledge that the policy is subject to a tax lien, the insurer may nevertheless continue to make so-called automatic premium loans to maintain the contract in force and have priority over the Federal tax lien with respect to such loans, if the agreement to make the automatic premium loans was entered into before the insurer had such actual notice or knowledge.

Subparagraph (C) of section 6323(b)(9) gives priority to the insuring organization at any time after the satisfaction of a levy pursuant to section 6332(b) of the code (relating to special rule for life insurance and endowment contracts, as added by sec. 104(b)(2) of the bill), unless and until the Secretary of the Treasury or his delegate delivers to such organization a notice, executed after the date of such satisfaction, of the existence of a tax lien. Thus, in any case in which the Secretary of the Treasury or his delegate has levied on an insurer, the insurer will, after the levy has been satisfied, have priority over any tax lien with respect to any later policy loans made unless and until the Secretary of the Treasury or his delegate delivers to the insurer another notification (e.g., another notice of levy, a letter, etc.), executed after the date of satisfaction of the prior levy, that a tax lien exists against the property or rights to property of the taxpayer. For purposes of paragraph (9), notification may be made by any means (including regular mail), but delivery will be deemed to be effective only from the time of actual receipt of such notification by the insuring organization.

Passbook loans.—Paragraph (10) of section 6323(b) provides that even though a notice of tax lien has been filed, the lien shall not be valid with respect to a savings deposit, share, or other account, evidenced by a passbook, with an institution described in either section 581 of the code (relating to definition of bank) or section 591 of the code (relating to deduction for dividends paid on deposits by certain savings institutions), to the extent of any loan made by such institution without actual notice or knowledge of the existence of the tax lien, if such loan is secured by such account and if such institution has been continuously in possession of such passbook from the time the loan is made. Thus, an unsatisfied loan made by a financial institution to a savings depositor will have priority over the Federal tax lien if the institution did not have actual notice or knowledge of the existence of the lien at the time the passbook loan was made, even though notice of the lien had been filed prior thereto.

(*c*) *Protection for certain commercial transactions financing agreements, etc.*

Under section 6323(a), as amended by the bill, a security interest (as defined in sec. 6323(h)(1)) which comes into existence before notice of a Federal tax lien is filed has priority over such lien. Subsection (c) of section 6323 grants priority to security interests which come into existence after notice of the lien is filed under certain prescribed circumstances.

In general.—Paragraph (1) of section 6323(c) provides that, to the extent provided in section 6323(c), a security interest which meets the requirements of subparagraphs (A) and (B) of section 6323(c)(1) shall have priority over a Federal tax lien even though such security interest came into existence after tax lien filing (as defined in sec. 6323(h)(5) of the code, as added by sec. 101(a) of the bill).

Subparagraph (A) of section 6323(c)(1) requires that the security interest be in qualified property covered by the terms of a written agreement entered into before tax lien filing and constituting either (i) a commercial transactions financing agreement (as defined in sec. 6323(c)(2)(A)), (ii) a real property construction or improvement financing agreement (as defined in sec. 6323(c)(3)(A)), or (iii) an obligatory disbursement agreement (as defined in sec. 6323(c)(4)(A)).

For purposes of subparagraph (A) of section 6323(c)(1), the written agreement must be entered into before notice of the tax lien is filed, although such agreement need not be recorded prior to that time. However, recordation in accordance with the provisions of local law may be necessary prior to the filing of the notice of lien in order to satisfy other provisions of subsection (c).

Subparagraph (B) of section 6323(c)(1) requires that, under local law, the security interest be protected against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation. The priority granted a security interest over a Federal tax lien under subsection (c) may not be greater than the priority accorded such security interest, under local law, against such a judgment lien creditor.

Commercial transactions financing agreement.—Paragraph (2) of section 6323(c) defines the commercial transactions financing agreements under which security interests granted priority under section 6323(c)(1) may come into existence. It also delineates the extent of that priority and describes the property which may be subject to the protected security interest.

Definition.—Subparagraph (A) of section 6323(c)(2) provides that, for purposes of section 6323(c), the term "commercial transactions financing agreement" means an agreement entered into by a person in the course of his trade or business either (i) to make loans to the taxpayer to be secured by commercial financing security (as defined in sec. 6323(c)(2)(C)) acquired by the taxpayer in the ordinary course of his trade or business, or (ii) to purchase commercial financing security, other than inventory, acquired by the taxpayer in the ordinary course of his trade or business. However, such an agreement shall be treated as coming within the term "commercial transactions financing agreement" only to the extent that such loan or purchase is made before the 46th day after the date of tax lien filing or, if earlier, before the date the lender or purchaser had actual notice or knowledge of such tax lien filing.

The lender or purchaser of commercial financing security under a commercial transactions financing agreement must, therefore, be a person who made the loan or the purchase in connection with the conduct of a trade or business. Thus, a protected lender or purchaser would include a person in the business of financing commercial transactions, such as a bank or commercial factor. It also includes a person who enters into such an agreement incident to the conduct of any trade or business. For example, a manufacturer who finances the accounts receivable of one of his customers, and who otherwise satisfies the requirements of subsection (c), is a protected lender under this provision. The borrower or seller of commercial financing security under a commercial transactions financing agreement must be a person who acquired such security in the ordinary course of his trade or business. The extent of the priority of the lender or purchaser over the tax lien is the amount of his disbursements made before the 46th day after the date notice of tax lien is filed, or the day (before such 46th day) on which the lender or purchaser has actual notice or knowledge of the filing of notice of the tax lien. Thus, the receipt of such actual notice or knowledge has the effect of ending the period within which protected disbursements may be made.

Limitation on qualified property.—Subparagraph (B) of section 6323 (c)(2) provides that the term "qualified property," when used with

respect to a commercial transactions financing agreement, includes only commercial financing security (as defined in sec. 6323(c)(2)(C)) acquired by the taxpayer before the 46th day after the date of tax lien filing. Under subparagraph (B), property subject to a protected security interest is limited to commercial financing security in existence at the time of tax lien filing or acquired within 45 days thereafter. Thus, a lender or purchaser has priority with respect to any commercial financing security acquired by the taxpayer during the 45-day period even though he earlier had actual notice or knowledge of the filing of notice of the tax lien which precluded him from increasing the amount of his priority by reason of further disbursements.

Commercial financing security defined.—Subparagraph (C) of section 6323(c)(2) provides that, for purposes of section 6323(c), the term "commercial financing security" means (i) paper of a kind ordinarily arising in commercial transactions, (ii) accounts receivable, (iii) mortgages on real property, and (iv) inventory. In general, paper of a kind ordinarily arising in commercial transactions includes any written document customarily used in commercial transactions. For example, the term includes paper giving contract rights (as defined in art. 9–106 of the Uniform Commercial Code); chattel paper (as defined in art. 9–105(b) of the Uniform Commercial Code); documents (as defined in art. 9–105(e) of the Uniform Commercial Code), such as documents of title to personal property; and, instruments (as defined in art. 9–105(g) of the Uniform Commercial Code), such as negotiable instruments or securities. It does not include general intangibles (for example, patents or copyrights), as such intangibles are defined in article 9–106 of the Uniform Commercial Code. Inventory which is commercial financing security includes raw materials and goods in process as well as property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.

Purchaser treated as acquiring security interest.—Subparagraph (D) of section 6323(c)(2) provides that a person who purchases commercial financing security (in accordance with the provisions of sec. 6323(c)(2)(A)(ii)) shall be treated for purposes of subsection (c) as having acquired a security interest in such security. Generally, section 6323(c) only applies to security interests. Your committee believes it desirable that persons (such as commercial factors) who have agreements to purchase commercial financing security (other than inventory) should be treated in the same manner as persons who acquire security interests in such security. Therefore, purchases of commercial financing security by a person who qualifies as a purchaser (within the meaning of the first sentence of sec. 6323(h)(6)), are treated as acquisitions of security interests in such security for purposes of subsection (c). Accordingly, if a person, in the course of his trade or business, enters into an agreement, before tax lien filing, to purchase commercial financing security, he will have priority over the Federal tax lien to the extent of purchases of such security made before the 46th day after the date of tax lien filing, or, if earlier, on the date he has actual notice or knowledge of the filing of notice of such lien. A bona fide purchase of commercial financing security at a discount is for an adequate and full consideration in money or money's worth.

Real property construction or improvement financing agreement.—Paragraph (3) of section 6323(c) defines the real property construction

or improvement financing agreements under which security interests granted priority under section 6323(c)(1) may come into existence. It also delineates the extent of that priority and describes the property which may be subject to the protected security interest. Paragraph (3) also applies to agreements to finance the raising or harvesting of farm crops and the raising of livestock or other animals.

Definition.—Subparagraph (A) of section 6323(c)(3) provides that, for purposes of section 6323(c), the term "real property construction or improvement financing agreement" means an agreement to make cash disbursements to finance either (i) the construction or improvement (including demolition) of real property, (ii) a contract to so construct or improve real property, or (iii) the raising or harvesting of a farm crop or the raising of livestock or other animals. For purposes of clause (iii), the furnishing of goods and services is treated as the disbursement of cash.

Clause (i) of section 6323(c)(3)(A) relates to the financing of the construction or improvement of real property. Clause (ii) of such section relates only to the financing of a contract for the construction or improvement of real property. In both of these cases, the disbursements protected are only those made in cash. Clause (iii) of such section relates to the financing of a farmer or livestock or other animal raiser. In such cases, the disbursements protected may be in goods and services as well as in cash. For example, a person financing a farm crop is protected to the extent of the value of the seed he furnishes to the farmer to plant a wheat crop and the value of the use of a combine to harvest that crop, as well as cash disbursements he makes to provide funds to pay farm laborers needed to plant and harvest the crop.

Limitation on qualified property.—Subparagraph (B) of section 6323(c)(3) provides that the term "qualified property," when used with respect to a real property construction or improvement financing agreement, includes only the property specified in clauses (i), (ii), and (iii) of section 6323(c)(3)(B).

Clause (i) of section 6323(c)(3)(B) provides that in the case of cash disbursements made under an agreement (described in sec. 6323(c)(3)(A)(i)) to finance the construction or improvement of real property, qualified property includes only the real property with respect to which the construction or improvement has been or is to be made. Thus, with respect to such cash disbursements made after a notice of tax lien has been filed, a lender has priority over the tax lien with respect to the real property which is being constructed or improved.

Clause (ii) of section 6323(c)(3)(B) provides that in the case of cash disbursements made under an agreement (described in sec. 6323(c)(3)(A)(ii)) to finance a contract to construct or improve real property, qualified property includes only the proceeds of the construction contract. Thus, with respect to such cash disbursements made to a construction contractor after a notice of tax lien has been filed, a lender has priority over the tax lien with respect to the construction contract proceeds.

Clause (iii) of section 6323(c)(3)(B) provides that in the case of disbursements made under an agreement (described in section 6323(c)(3)(A)(iii)) to finance a farmer or livestock or other animal raiser, qualified property includes the crop or the livestock or other

animals raised, and any property subject to the lien imposed by section 6321 (relating to lien for taxes) at the time of tax lien filing. Therefore, with respect to disbursements made to a farmer or livestock or other animal raiser after a notice of tax lien has been filed, a lender has priority over the tax lien with respect to the crop or the livestock or other animals he has financed, the proceeds of the sale of such crop or livestock, and any other property subject to such lien at the time the notice of tax lien was filed which is subject to the security interest arising under the written agreement.

Obligatory disbursement agreement.—Paragraph (4) of section 6323(c) defines the obligatory disbursement agreements under which security interests granted priority under section 6323(c)(1) may come into existence. It also delineates the extent of that priority and describes the property which may be subject to the protected security interest.

Definition.—Subparagraph (A) of section 6323 (c) (4) provides that, for purposes of section 6323 (c), the term "obligatory disbursement agreement" means an agreement to make disbursements entered into by a person in the course of his trade or business. However, such an agreement is treated as coming within the meaning of the term only to the extent of disbursements which are required to be made by reason of the intervention of the rights of a person other than the taxpayer. The obligor must, as in the case of a lender or purchaser under a commercial transactions financing agreement described in section 6323(c)(2), have assumed his obligation to make disbursements in the course of his trade or business. Thus, this provision is applicable where an issuing bank obligates itself to honor drafts or other demands for payment on a letter of credit or a bonding company obligates itself to make payments to indemnify against loss or liability. It is not, for example, applicable to accommodation endorsers who assume their obligation other than incidental to their trade or business. The requirement that disbursements be made must arise on the happening of an event beyond the obligor's control. This requirement must, therefore, be triggered by the intervention of the rights of a third party, such as the good faith reliance of a supplier of goods or a bank authorized to honor a letter of credit on an issuing bank's obligation under a letter of credit.

Limitation on qualified property.—Subparagraph (B) of section 6323(c)(4) provides that the term "qualified property," when used with respect to an obligatory disbursement agreement, means property subject to the lien imposed by section 6321 (relating to lien for taxes) at the time of tax lien filing and, to the extent that the acquisition is directly traceable to the disbursements referred to in section 6323(c)(4)(A), property acquired by the taxpayer after tax lien filing. For example, the X bank, pursuant to a written agreement, issues an irrevocable letter of credit to allow A, the taxpayer, to finance the purchase of 100 automobiles. X bank honors its obligation after the filing of a notice of tax lien. X bank has priority over the tax lien with respect to the 100 automobiles which were purchased by A with the cash disbursements. In addition, if the written agreement so provides, X bank's priority extends to any other property whose acquisition is directly traceable to its cash disbursements, such as the proceeds of sale of the automobiles.

Special rules for surety agreements.—Subparagraph (C) of section 6323(c)(4) provides that, for purposes of section 6323(c), where the

obligatory disbursement agreement is a surety contract insuring the performance of a contract between the taxpayer and another person, (i) the term "qualified property" shall be treated as also including the proceeds of the contract the performance of which was insured, and (ii) if the contract the performance of which was insured was a contract to construct or improve real property, to produce goods, or to furnish services, the term "qualified property" shall be treated as also including any tangible personal property used by the taxpayer in the performance of the insured contract. For example, a surety company which holds a security interest, arising from cash disbursements made (after tax notice filing) under a payment or performance bond on a real estate construction project, has priority over the tax lien with respect to the proceeds of the construction contract and with respect to any tangible personal property used by the taxpayer in the construction project. The priority with respect to tangible personal property used in the performance of an insured contract is, however, only available to the surety company if its security interest in such property is protected under local law, against a judgment lien arising, as of the time the notice of tax lien was filed, out of an unsecured obligation.

(*d*) *45-day period for making disbursements*

Under section 6323(a), as amended by the bill, a security interest (as defined in sec. 6323(h)(1)) which comes into existence before notice of a Federal tax lien is filed has priority over such lien. Subsection (c) of section 6323 grants priority to security interests which come into existence after notice of the lien is filed, but only if the security interest arises out of any of three types of defined financing agreements. Generally, subsection (d) of section 6323 grants priority to any security interest which comes into existence by reason of disbursements made before the 46th day after the date of filing of a notice of tax lien, but only as to property, subject to the security interest, which is in existence at the time the notice of tax lien was filed.

Subsection (d) provides that even though notice of a Federal tax lien has been filed, such lien shall not be valid with respect to a security interest which came into existence after such notice was filed by reason of disbursements made before the 46th day after the date of the tax lien filing, or (if earlier) before the person making such disbursements had actual notice or knowledge of the filing of notice of such lien. However, a security interest protected under the provisions of subsection (d) must satisfy the requirements of paragraphs (1) and (2) of such subsection.

Paragraph (1) of section 6323(d) requires that the security interest be in property which is (A) subject, at the time of tax lien filing, to the lien imposed by section 6321 (relating to lien for taxes), and (B) covered by the terms of a written agreement entered into before tax lien filing. Thus, the security interest must arise out of a written agreement entered into before the notice of tax lien was filed and must constitute a security interest in property which is in existence at the time of such filing.

Paragraph (2) of section 6323(d) requires that a security interest be protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation. The priority granted a security interest over a Federal tax lien under subsection (d) may not be greater than the priority accorded such security interest, under local law, against such a judgment lien creditor.

(e) Priority of interest and expenses

Subsection (e) of section 6323 provides that if the lien imposed by section 6321 (relating to lien for taxes) is not valid as against a lien or security interest, the priority of such lien or security interest shall extend to the items specified in paragraphs (1) through (6) of section 6323(e), to the extent that, under local law, any such item has the same priority as the lien or security interest to which it relates. For purposes of subsection (e), the specified items have the same priority as the lien or security interest to which they relate, if, under local law, they are added to and become a part of the lien or security interest.

Paragraph (1) of section 6323(e) permits the amount of a lien or security interest, which has priority over the Federal tax lien, to be increased by any interest or carrying charges (including finance charges, service charges, and the like) upon the obligation secured. Paragraph (1) codifies existing law as to interest and makes clear that carrying charges are treated similarly.

Paragraph (2) of section 6323(e) permits the amount of a lien or security interest, which has priority over the Federal tax lien, to be increased by the reasonable charges and expenses of an indenture trustee or agent holding the security interest for the benefit of the holder of the security interest. Indenture trustees, for example, include trustees under a deed of trust.

Paragraph (3) of section 6323(e) permits the amount of a lien or security interest, which has priority over the Federal tax lien, to be increased by the reasonable expenses, including reasonable compensation for attorneys, actually incurred in collecting or enforcing the obligation secured. Thus, a protected holder of a security interest or lien may increase the amount of his encumbrance by the amount of his expenditures incurred to establish the priority of his interest or to collect (by foreclosure or otherwise) the amount due him from the property subject to his lien. Paragraph (3), therefore, reverses the result reached in *United States* v. *Pioneer American Insurance Co.*, 374 U.S. 84 (1963), and in *United States* v. *Equitable Life Assurance Soc. of the United States*, 384 U.S. 323 (1966).

Paragraph (4) of section 6323(e) permits the amount of a lien or security interest, which has priority over the Federal tax lien, to be increased by the reasonable costs of insuring, preserving, or repairing the property subject to the lien or security interest. For example, the amount of a protected security interest may be increased by amounts paid by the security interest holder for fire and casualty insurance on the property subject to the security interest and amounts paid by him to repair such property. In addition, the holder of a security interest in a leasehold may increase the amount of his security interest by the amount of rental payments made to the lessor to preserve the leasehold subject to the security interest.

Paragraph (5) of section 6323(e) permits the amount of a lien or security interest, which has priority over the Federal tax lien, to be increased by the reasonable costs of insuring payment of the obligation secured. The amount of a protected security interest may, therefore, be increased by amounts paid by the security interest holder for mortgage insurance, such as Federal Housing Administration insurance.

Paragraph (6) of section 6323(e) permits the amount of a lien or security interest, which has priority over the Federal tax lien, to be

increased by the amounts paid by the holder of such lien or security interest to satisfy any lien on the property to which the lien or security interest relates, but only if the lien so satisfied is entitled to priority over the Federal tax lien. For example, if both a security interest and a statutory lien for State sales taxes have priority over a Federal tax lien, the holder of the protected security interest may discharge the sales tax lien and increase the amount of his security interest by the amount so expended, even though under local law he is not subrogated to the rights of the holder of the sales tax lien. However, if the holder of the security interest is, within the meaning of section 6323(i)(2), subrogated to the rights of the holder of the sales tax lien, he will also be entitled to any additional protection afforded by such section.

(*f*) *Place for filing notice; form*

Subsection (f) of section 6323, as amended by the bill, continues in effect the rules relating to the place for filing notices of Federal tax lien and the form of such notices which are contained in subsections (a) and (b) of section 6323 of present law.

(*g*) *Refiling of notice*

The Secretary of the Treasury or his delegate gives public notice of the existence of a Federal tax lien by filing a notice of the lien. Subsequent to such filing, present law does not require anything further to be done by the United States to maintain the effect of a notice of lien. Subsection (g) of section 6323 contains new rules requiring the Secretary of the Treasury or his delegate to refile notices of lien at the end of the 6-year statutory period for collection of an assessed tax liability, and each succeeding period of 6 years, to maintain the effect of a notice of lien.

In general.—Paragraph (1) of section 6323(g) provides that, for purposes of section 6323, unless notice of a lien is refiled (in the office in which the prior notice of such lien was filed) during the required refiling period (as defined in sec. 6323(g)(2)), such notice of lien shall be treated as filed on the date on which it is filed, in accordance with section 6323(f) (relating to place for filing notice; form), after the expiration of such required refiling period.

A timely refiling of notice of a lien must, therefore, be made by the Secretary of the Treasury or his delegate in the same office in which the prior notice of such lien was filed. If, however, the Secretary of the Treasury or his delegate fails to refile notice of a lien within the required refiling period, the notice of lien then on file is not effective, after the expiration of the required refiling period, as against any person without regard to when the interest in the property subject to the tax lien was acquired. The effectiveness of a timely refiled notice of lien relates back to the date as of which the notice of such lien was effective before such refiling.

However, if notice of the lien is not refiled within the required refiling period, and if the Federal tax lien is still in existence, the Secretary of the Treasury or his delegate may nevertheless refile a notice of such lien. Such late refiling (1) must meet the requirements of section 6323(f) (relating to place for filing notice; form), in the same manner as if such filing were an initial filing of notice of the lien and (2) is effective only from the date on which such refiling is made.

Your committee understands that the Secretary of the Treasury or his delegate, as a matter of administrative practice, will, upon request, promptly issue a certificate of release of any lien where notice of such lien has not been refiled within the required refiling period and the period of limitation on collection after assessment has expired.

Required refiling period.—Paragraph (2) of section 6323(g) provides that, in the case of any notice of lien, the term "required refiling period" means (A) the 1-year period ending 30 days after the expiration of 6 years after the date of the assessment of the tax, and (B) the 1-year period ending with the expiration of 6 years after the close of the preceding required refiling period for such notice of lien.

Example.—The provisions of subsection (g) (1) and (2) are illustrated by the following example:

On March 1, 1963, an assessment of tax was made against A, a delinquent taxpayer, and a Federal tax lien for the amount of the assessment arose on that date. On July 1, 1963, a notice of the lien was properly filed. The notice of lien filed on July 1, 1963, is effective up to and including March 31, 1969. The first required refiling period for the notice of lien begins on April 1, 1968, and ends on March 31, 1969. A refiling of notice of the lien during that period will extend the effectiveness of the notice of lien filed on July 1, 1963, up to and including March 31, 1975. The second required refiling period for the notice of lien begins on April 1, 1974, and ends on March 31, 1975.

If, however, the Secretary of the Treasury or his delegate fails to refile a notice of the lien during the first required refiling period (April 1, 1968, through March 31, 1969), then a notice of the lien filed after March 31, 1969, (1) must meet the requirements of section 6323(f) (relating to place for filing notice; form) at the time of such filing and (2) is effective only from the date on which it is so filed.

Transitional rule.—Paragraph (3) of section 6323(g) provides a transitional rule applicable to all notices of lien which relate to tax liens which arose before January 1, 1962. Paragraph (3) provides that, notwithstanding the rules contained in section 6323(g)(2), if the assessment of the tax was made before January 1, 1962, the first required refiling period shall be the calendar year 1967. Thus, to maintain the effectiveness of any notice of lien now on file which relates to a tax lien that arose before January 1, 1962, the Secretary of the Treasury or his delegate must refile notice of the lien during the calendar year 1967. The second required refiling period for any such notice of lien would be the calendar year 1973.

(h) Definitions

Subsection (h) of section 6323 contains definitions applicable for purposes of section 6323 and section 6324 (relating to special liens for estate and gift taxes).

Security interest.—Paragraph (1) of section 6323(h) provides that the term "security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time (A) if, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien arising out of an unsecured obligation; and (B) to the extent that, at such time, the holder has parted with money or money's worth.

A security interest must be in existence, within the provisions of section 6323(h)(1), at the time as of which its priority as against a Federal tax lien is determined. For example, a security interest, to be afforded priority under section 6323(a), as amended by the bill, must be in existence within the meaning of subsection(h)(1) before notice of the tax lien is filed.

For purposes of subsection (h)(1), a security interest becomes protected against a subsequent judgment lien on the date on which all actions required under local law to establish the priority of the security interest against such a judgment lien have been taken, or, if later, the date on which all such actions are deemed effective, under local law, to establish such priority. Therefore, a security interest comes into existence only at the time prescribed in the preceding sentence notwithstanding any rule or principle of local law which permits the relation back of any requisite action to a date earlier than the date on which it is actually performed. The priority granted a security interest over a Federal tax lien under any provision of section 6323 or section 6324 is never greater than the priority accorded such security interest, under local law, against a subsequent judgment lien arising out of an unsecured obligation.

Mechanic's lienor.—Paragraph (2) of section 6323(h) provides that the term "mechanic's lienor" means any person who under local law has a lien on real property (or on the proceeds of a contract relating to real property) for services, labor, or materials furnished in connection with the construction or improvement (including demolition) of such property. For purposes of this definition, a person has a lien on the earliest date such lien becomes valid under local law against subsequent purchasers of the real property without actual notice, but not before the mechanic's lienor begins to furnish the services, labor, or materials. Thus, a mechanic's lienor who takes all of the requisite actions under local law to perfect and enforce his lien is deemed to be a "mechanic's lienor" from a date no earlier than the day on which he began to furnish the services, labor, or materials on the job to which the lien relates.

Motor vehicle.—Paragraph (3) of section 6323(h) continues in effect the definition of the term "motor vehicle" contained in section 6323(d)(2) of present law.

Security.—Paragraph (4) of section 6323(h) continues in effect, with clerical changes, the definition of the term "security" contained in section 6323(c)(2) of present law.

Tax lien filing.—Paragraph (5) of section 6323(h) provides that the term "tax lien filing" means the filing of notice (referred to in sec. 6323(a)) of the lien imposed by section 6321 of the code (relating to lien for taxes).

Purchaser.—Present law does not define the term "purchaser." The courts have held that a purchaser, for purposes of existing section 6323, is a person who acquires title to property for a valuable consideration. See *United States* v. *Scovil*, 348 U.S. 218, 221 (1955). A valuable consideration, as interpreted by the courts, may not be a nominal amount, but it may be so small an amount as to have little relation to the value of the property acquired. See, for example, *Enochs* v. *Smith*, 359 F. 2d 924 (5th Cir. 1966). Paragraph (6) of section 6323(h) changes present law by adding to the code a definition of the term "purchaser".

Paragraph (6) provides that the term "purchaser" means a person who, for adequate and full consideration in money or money's worth, acquires an interest (other than a lien or security interest) in property which is valid under local law against subsequent purchasers without actual notice. A purchaser must acquire his interest in property in a transaction having the indicia of a vendor-vendee relationship. Although paragraph (6), by requiring adequate and full consideration, changes the result reached in *Enochs* v. *Smith*, *supra*, it does not preclude a bona fide bargain purchaser from qualifying under this definition. In applying the definition of the term "purchaser" for purposes of section 6323(a) and 6324 (relating to special liens for estate and gift taxes) (A) a lease of property, (B) a written executory contract to purchase or lease property, (C) an option to purchase or lease property or any interest therein, or (D) an option to renew or extend a lease of property, which is not a lien or security interest, shall be treated as an interest in property.

(*i*) *Special rules*

Subsection (i) of section 6323 contains special rules regarding actual notice or knowledge, subrogation, and the disclosure by the Secretary of the Treasury or his delegate of the amount of an outstanding tax lien.

Actual notice or knowledge.—Paragraph (1) of section 6323(i) provides that, for purposes of subchapter C of chapter 64 of the code (relating to lien for taxes), an organization shall be deemed for purposes of a particular transaction to have actual notice or knowledge of any fact from the time such fact is brought to the attention of the individual conducting such transaction, and in any event from the time such fact would have been brought to such individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information. This definition is the same as that contained in article 1–201(27) of the Uniform Commercial Code.

Subrogation.—Paragraph (2) of section 6323(i) provides that where, under local law, one person is subrogated to the rights of another with respect to a lien or interest, such person shall be subrogated to such rights for purposes of any lien imposed by section 6321 of the code (relating to lien for taxes) or section 6324 of the code (relating to special liens for estate and gift taxes).

Disclosure of amount of outstanding lien.—Paragraph (3) of section 6323(i) continues in effect, with clerical changes, the provisions presently contained in section 6323(e) of the code.

SECTION 101. PRIORITY OF LIENS (Continued)

(*b*) *Clerical amendments*

Paragraph (1) of section 101(b) of the bill amends the table of sections for subchapter C of chapter 64 of the code to reflect the new

heading for section 6323 of the code (as changed by sec. 101(a) of the bill). Paragraph (2) of section 101(b) of the bill amends section 545(b)(9) (relating to amount of a lien in favor of the United States) to reflect the amendment made by section 101(a) of the bill to present section 6323(a) of the code.

SECTION 102. SPECIAL LIENS FOR ESTATE AND GIFT TAXES

Section 102 of the bill amends present section 6324 of the code (relating to special liens for estate and gift taxes) (1) to make clear that special estate and gift tax liens are extinguished after the running of the period of limitations on collection of the tax liability, and (2) to extend to certain additional categories of interests the same protection against special estate and gift tax liens that such interests are afforded, under section 6323 of the code (relating to validity and priority against certain persons, as amended by section 101(a) of the bill), with respect to the general tax lien.

SECTION 6324. SPECIAL LIENS FOR ESTATE AND GIFT TAXES

(*a*) *Liens for estate tax*

As under present law, section 6324(a) imposes a special estate tax lien upon the gross estate of the decedent.

Upon gross estate.—Under present section 6324(a)(1), the special lien for estate taxes which attaches to the decedent's gross estate on the date of his death continues for a period of 10 years unless the estate tax is sooner paid in full. Section 6324(a)(1), as amended, provides that the special estate tax lien will terminate before the expiration of 10 years if the estate tax liability sooner becomes unenforcible by reason of lapse of time. In all other respects section 6324(a)(1) is identical to existing law.

Liability of transferees and others.—Paragraph (2) of section 6324(a) is amended to conform to the changes made in section 6323 of the code (relating to validity and priority against certain persons), as amended by section 101(a) of the bill, by substituting "purchaser or holder of a security interest" (as those terms are defined in section 6323(h)) for the purchasers, mortgagees, and pledgees referred to in existing section 6324.

Continuance after discharge of executor.—Paragraph (3) of section 6324(a) is amended (in the same manner as paragraph(2)) to conform to the changes made in section 6323 of the code (relating to validity and priority against certain persons) as amended by section 101(a) of the bill.

(*b*) *Lien for gift tax*

As under present law, section 6324(b) imposes a special gift tax lien upon all gifts made during the calendar year. This special lien continues for a period of 10 years unless the gift tax is sooner paid in full. Section 6324(b), as amended, provides that the special gift tax lien will terminate before the expiration of 10 years if the gift tax liability sooner becomes unenforcible by reason of lapse of time. In addition, section 6324(b) is amended (in the same manner as section 6324(a)) to conform to the changes made in section 6323 of the code

(relating to validity and priority against certain persons) as amended by section 101(a) of the bill. In all other respects section 6324(b) is identical to existing law.

(*c*) *Exceptions*

Subsection (c) of section 6324 provides that the special lien for estate taxes under section 6324(a) and the special lien for gift taxes under section 6324(b) shall not be valid against certain interests that have been afforded priority over the general tax lien in section 6323 of the code (relating to validity and priority against certain persons, as amended by section 101(a) of the bill).

Paragraph (1) of section 6324(c) provides that the special estate and gift tax liens shall not be valid as against a mechanic's lienor (as defined in section 6323(h)(2) of the code, as added by section 101(a) of the bill), and as against any lien or interest described in section 6323(b) of the code (relating to protection for certain interests even though notice filed), as added by section 101(a) of the bill, if the conditions specified in such section are satisfied. Paragraph (1) continues in effect the exception for securities contained in present section 6324(c) and the exception for motor vehicles contained in present section 6324(d).

Paragraph (2) of section 6324(c) provides that if a lien or security interest has priority over the special estate or gift tax lien, such priority shall extend to the items described in section 6323(e) of the code (relating to priority of interest and expenses, as added by section 101(a) of the bill), to the extent that, under local law, such item has the same priority as the lien or security interest to which it relates. Thus, for example, if A has a valid mortgage on B's farm, A's priority over the special lien will include not only the amount of the mortgage debt owed to him, but also the amount of interest and allowable expenses described in section 6323(e).

SECTION 103. CERTIFICATES RELATING TO LIENS

(*a*) *Amendment of section 6325*

Subsection (a) of section 103 of the bill amends section 6325 of the code (relating to release of lien or partial discharge of property). Section 6325 of the code presently provides for the release of the Federal tax lien and for the discharge of property from such lien. Section 6325 as amended also (1) provides new rules for the discharge of property when the sale proceeds of such property are substituted for the property discharged; (2) authorizes the subordination of tax liens; (3) authorizes the issuance of certificates of nonattachment of the tax lien; and (4) provides new rules relating to the legal effect of certificates issued pursuant to such section.

SECTION 6325. RELEASE OF LIEN OR DISCHARGE OF PROPERTY

(*a*) *Release of lien*

Subsection (a) of section 6325 continues in effect, with clerical changes, the provisions of existing section 6325(a) of the code.

(*b*) *Discharge of property*

Present section 6325(b) of the code authorizes the Secretary of the Treasury or his delegate to discharge specific property from a tax lien

(1) if the fair market value of the property remaining subject to the lien is at least double the amount of the unsatisfied tax liability, (2) if there is paid over to the Government the value of the interest of the United States in the property to be discharged, or (3) if he determines that the interest of the United States in the property to be discharged has no value. Section 6325(b) as amended permits the Secretary of the Treasury or his delegate to take into account, for example, the forced sale value of property in determining the value of the interest of the United States in such property for purposes of section 6325(b)(2). Section 6325(b) as amended also permits property to be discharged from a Federal tax lien where it is sold and, in accordance with an agreement with the Secretary of the Treasury or his delegate, the proceeds of sale are held subject to the claims of the United States.

Property double the amount of the liability.—Paragraph (1) of section 6325(b) continues in effect, with a clerical change, the provisions of existing law.

Part payment; interest of United States valueless.—Paragraph (2) of section 6325(b) as amended continues in effect, with clerical changes, the provisions of present law except that in determining the value of the interest of the United States in property sought to be discharged from a Federal tax lien, the Secretary of the Treasury or his delegate shall give consideration to the "value" (as distinguished from the "fair market value" as provided by existing law) of the property. Although the Secretary of the Treasury or his delegate may continue to give consideration to the fair market value of property, he may take into account forced sale value in appropriate cases.

Substitution of proceeds of sale.—Paragraph (3) of section 6325(b) provides that subject to such regulations as the Secretary of the Treasury or his delegate may prescribe, the Secretary of the Treasury or his delegate may issue a certificate of discharge of any part of the property subject to a tax lien if such part of the property is sold and, pursuant to an agreement with the Secretary of the Treasury or his delegate, the proceeds of such sale are to be held, as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as such liens and claims had with respect to the discharged property.

This new procedure is available to facilitate the disposition of property whenever a dispute exists among competing lienors, including the United States, concerning their respective rights in such property. Questions concerning the distribution of the resulting fund may, for example, be resolved by negotiation or by suit against the United States under section 7426(a)(3) of the code, as added by section 110(a) of the bill.

(*c*) *Estate or gift tax*

Subsection (i) of section 6325 continues in effect, with a clerical change, the provisions of present section 6325(c).

(*d*) *Subordination of lien*

Under new subsection (d) of section 6325, the Secretary of the Treasury or his delegate is authorized to issue a certificate of subordination of a tax lien when either (1) there is paid over to the Government an amount equal to the amount of the lien to which the tax lien is subordinated or (2) the Secretary of the Treasury or

his delegate believes that the subordination of the lien will ultimately result in an increase in the amount realizable by the United States from the property subject to the lien and will facilitate the ultimate collection of the tax liability.

Under paragraph (1) of new subsection (d), the tax lien may be subordinated to another lien or interest on a dollar-for-dollar basis, as in the case where a delinquent taxpayer secures private financing on a part of the property subject to the tax lien. Under paragraph (2) of new subsection (d), the Secretary of the Treasury or his delegate may subordinate the tax lien on any part of the property subject to the lien, if he believes that the interest of the United States in that part or any other part of the property will ultimately be increased by the subordination and the ultimate collection of the outstanding tax liability will be thereby facilitated. For example, a farmer may need money to harvest his crop. However, a Federal tax lien, notice of which has been filed, is outstanding with respect to his property. A lending institution may be willing to make the necessary loan if it is secured by a first mortgage on his farm. In such a case, the Secretary of the Treasury or his delegate could subordinate the tax lien on the farm to the mortgage securing the crop harvesting loan since the overall value of the taxpayer-farmer's property will be increased in value and the collection of the tax liability will be facilitated by the availability of cash when the crop is sold. The Secretary of the Treasury or his delegate is expected to utilize the authority granted in new section 6325(d)(2) in cases similar to those in which an ordinary prudent businessman would subordinate his rights to secure similar benefits.

(e) Nonattachment of lien

New subsection (e) of section 6325 codifies the present administrative practice of the Internal Revenue Service of issuing certificates certifying that the property of an individual is not subject to a tax lien which is outstanding against a person with a similar name. New subsection (e) provides that if the Secretary of the Treasury or his delegate determines that, because of a confusion of names or otherwise, any person (other than the person against whom the tax was assessed) is or may be injured by the appearance that a notice of tax lien filed under section 6323 of the code (relating to validity and priority against certain persons, as amended by section 101(a) of the bill) refers to such person, the Secretary of the Treasury or his delegate may issue a certificate that the lien of which notice has been filed does not attach to the property of the person who is or may be so injured.

(f) Effect of certificate

New subsection (f) of section 6325 contains expanded rules concerning the legal effect of certificates issued pursuant to section 6325 as amended by the bill.

Conclusiveness.—Paragraph (1) of new subsection (f) contains the general rules with respect to the conclusive legal effect of certificates issued pursuant to section 6325. Paragraph (1) provides that, except as otherwise provided in paragraphs (2) and (3) of new subsection (f), if a certificate is issued pursuant to section 6325 by the Secretary of the Treasury or his delegate, and the certificate is filed in the same office as the notice of lien to which it relates (if such notice of lien has

been filed), then the certificate shall have the effect prescribed in subparagraphs (A), (B), (C), and (D) of section 6325(f)(1).

Subparagraph (A) of new section 6325(f)(1) provides that in the case of a certificate of release of lien, the certificate shall be conclusive that the tax lien referred to in the certificate is extinguished. This continues in effect the rule contained in present section 6325(d) (relating to effect of certificate of release or discharge).

Subparagraph (B) of new section 6325(f)(1) provides that in the case of a certificate of discharge, the certificate shall be conclusive that the property covered by the certificate is discharged from the tax lien. This continues in effect the rule contained in present section 6325(d) (relating to effect of certificate of release or discharge).

Subparagraph (C) of new section 6325(f)(1) provides that in the case of a certificate of subordination of the tax lien issued under new section 6325(d) (relating to subordination of lien), the certificate shall be conclusive that the lien or interest to which the Federal tax lien is subordinated is superior to the tax lien.

Subparagraph (D) of new section 6325(f)(1) provides that in the case of a certificate of nonattachment issued under new section 6325(e) (relating to nonattachment of lien), the certificate shall be conclusive that the lien of the United States does not attach to the property of the person referred to in the certificate.

Revocation of certificate of release or nonattachment.—Paragraph (2) of new section 6325(f) authorizes the Secretary of the Treasury or his delegate to revoke certain certificates issued under section 6325 and to reinstate the Federal tax liens to which the certificates relate. Paragraph (2) provides that if the Secretary of the Treasury or his delegate determines that either (1) a certificate of release or a certificate of nonattachment of the general tax lien was issued erroneously or improvidently, or (2) a certificate of release was issued in connection with a compromise under section 7122 of the code (relating to compromises) which has been breached, and the period of limitation on collection after assessment of the tax liability has not expired, then the Secretary of the Treasury or his delegate may revoke the certificate and reinstate the tax lien. Revocation of the certificate and reinstatement of the tax lien are accomplished by mailing notice of the revocation to the taxpayer at his last known address and by filing notice of the revocation of the certificate in the same office in which the notice of lien to which it relates was filed (if such notice of lien had been filed).

A tax lien reinstated in accordance with these provisions shall be effective on the date the notice of revocation is mailed to the taxpayer, but not before the date of filing of notice of revocation, when such filing is required by reason of the fact that a notice of the lien had been filed. As of the effective date of reinstatement, a reinstated lien has the same force and effect as a general tax lien (under section 6321 of the code) which arises upon assessment of a tax liability. However, the reinstated lien may not be in existence for a period longer than the period of limitation on collection after assessment of the tax liability to which it relates.

Thus, the reinstated lien shall not be valid against any holder of a lien or interest described in section 6323(a) until notice thereof has been filed in accordance with the provisions of section 6323(f) subsequent to the time the reinstated lien became effective.

The provisions of section 6325(f)(2) are illustrated by the following example:

Example: On March 1, 1967, an assessment of an unpaid Federal tax liability is made against A. On March 1, 1968, notice of the Federal tax lien which arose at the time of assessment is filed. On April 1, 1968, A executes a bona fide mortgage on property belonging to him to B. On May 1, 1968, a certificate of release of the tax lien is erroneously issued and filed of record by A in the same office in which the notice of lien was filed. On June 1, 1968, the lien is reinstated in accordance with the provisions of section 6325(f)(2). On July 1, 1968, A executes a bona fide mortgage on property belonging to him to C. On August 1, 1968, a notice of the lien which was reinstated is properly filed in accordance with the provisions of section 6323(f).

In the absence of any extension or suspension of the period of limitation on collection after assessment, the reinstated lien will become unenforcible by reason of lapse of time after February 28, 1973. The mortgages of both B and C have priority over the rights of the United States with respect to the tax liability in question.

Certificates void under certain conditions.—Paragraph (3) of new section 6325(f) provides that notwithstanding any other provision of subtitle F of the code (relating to procedure and administration), any lien imposed by chapter 64 of subtitle F of the code (relating to lien for taxes) shall attach to any property with respect to which a certificate of discharge has been issued if the person liable for the tax reacquires such property after such certificate has been issued.

Thus, if property subject to a Federal tax lien is discharged therefrom, and is later reacquired by the delinquent taxpayer at a time when such lien is still in existence, the tax lien attaches to the reacquired property and is enforcible against it as in the case of after-acquired property generally.

(*g*) *Filing of certificates and notices*

New section 6325(g) insures that all certificates and notices issued under section 6325 may be publicly recorded. Subsection (g) provides that if a certificate or notice issued pursuant to section 6325 may not be filed in the office designated by State law in which the notice of lien imposed by section 6321 of the code (relating to lien for taxes) to which such certificate or notice relates is filed, the certificate or notice is effective if filed in the office of the clerk of the U.S. district court for the judicial district in which the State office where the notice of lien is filed is situated.

(*h*) *Cross reference*

New section 6325(h) provides a cross reference to chapter 73 of subtitle F of the code (relating to bonds).

SECTION 103. CERTIFICATES RELATING TO LIENS (Continued)

(*b*) *Clerical amendment*

Subsection (b) of section 103 of the bill amends the table of sections for subchapter C of chapter 64 of the code to reflect the new heading for section 6325 of the code (as changed by section 103(a) of the bill).

SECTION 104. SEIZURE OF PROPERTY FOR COLLECTION OF TAXES

(*a*) *Effect of levy*

Section 6331 of the code (relating to levy and distraint) provides, in general, that the Secretary of the Treasury or his delegate may levy upon the property or rights to property of a delinquent taxpayer to collect his outstanding tax liability. Section 6331 (b) of the code (relating to seizure and sale of property) provides that the term "levy" includes the power of distraint and seizure by any means. Section 104 (a) of the bill adds a new sentence after the first sentence in existing section 6331(b) to provide that a levy shall extend only to property possessed or obligations existing at the time thereof. Obligations are in existence when the liability of the obligor is fixed and determinable even though the right to receive payment thereof is deferred to a later date. For example, if a wage earner is paid on the Wednesday following the close of each workweek, a levy made upon his employer on Monday would reach his wages due for the prior workweek, although the employer need not satisfy the levy by paying over such amount to the Government until Wednesday.

Similarly, a levy only reaches property subject to levy in the possession of the person levied upon at the time the levy is made. If, for example, a levy is made on a bank with respect to the account of a delinquent taxpayer and the bank surrenders to the Secretary of the Treasury or his delegate the amount of the taxpayer's balance at the time the levy was made, the levy is satisfied. The levy has no effect upon any subsequent deposit made in the bank by the taxpayer. Subsequent deposits may be reached only by a subsequent levy on the bank.

(*b*) *Surrender of property subject to levy*

Section 104(b) of the bill amends section 6332 of the code (relating to surrender of property subject to levy) by adding special rules for a levy on an insuring organization with respect to life insurance and endowment contracts of delinquent taxpayers, by clarifying the disposition of amounts collected by reason of the imposition of personal liability on a person who fails to honor a levy, by imposing a penalty on a person who, without reasonable cause, fails to honor a levy, and by adding new rules concerning the legal effect of honoring a levy.

Paragraph (1) of section 104(b) of the bill amends present section 6332(a) of the code (relating to requirement) by striking out the words "Any person" and inserting in lieu thereof "Except as otherwise provided in subsection (b), any person".

Paragraph (2) of section 104(b) of the bill amends present section 6332(b) of the code (relating to penalty for violation) to provide new rules for levying upon life insurance and endowment contracts. New section 6332(b) provides a direct method by which the Government can obtain from an insurer the cash loan value of a delinquent taxpayer's unmatured life insurance and endowment contracts. The new rules make the use of the lien foreclosure procedures of present law unnecessary, in most cases, to reach the taxpayer's interest in a life insurance contract. In addition, use of the new levy procedure preserves in force the insurance coverage of the taxpayer-insured, which coverage is usually extinguished in a lien foreclosure proceeding. However, the new procedure does not limit the existing levy pro-

visions as they apply with respect to life insurance and endowment contracts.

Special rule for life insurance and endowment contracts

In general.—Paragraph (1) of the new section 6332(b) establishes a method by which the Government may, by levy and without surrender of the contract document, secure from an insuring organization the cash loan value of a delinquent taxpayer's life insurance and endowment contracts. Paragraph (1) provides that a levy on an organization with respect to a life insurance or endowment contract issued by such organization shall constitute (1) a demand by the Secretary of the Treasury or his delegate for the payment of the amount described in new section 6332(b)(2) (the cash loan value of the contract with certain adjustments), and (2) the exercise of the right of the person against whom the tax is assessed to the advance of such amount. It is unnecessary for the Secretary of the Treasury or his delegate to surrender the contract document to the organization upon which the levy is made. However, the notice of levy must include a certificate by the Secretary of the Treasury or his delegate that a copy of the notice of levy has been mailed to the person against whom the tax is assessed at his last known address.

The organization upon which the levy is made must pay over to the Secretary of the Treasury or his delegate the requisite amount 90 days after service of the notice of levy. Your committee understands that the Internal Revenue Service will establish procedures under which steps will be taken to eliminate so far as practical unnecessary payments pursuant to such levies. For example, an organization which has been levied upon with respect to a life insurance policy will ordinarily be notified before the expiration of the 90-day payment period in those cases in which the taxpayer's liability has (or has in part) been satisfied from other sources so that no payment (or only part payment) pursuant to the levy is necessary.

Satisfaction of levy.—The amount to be paid over to the Secretary of the Treasury or his delegate by the organization levied upon is determined under paragraph (2) of new section 6332(b). This amount is the cash loan value of the contract with certain adjustments (if necessary). Paragraph (2) provides that a levy with respect to a life insurance or endowment contract shall be deemed to be satisfied if the organization levied upon pays over to the Secretary of the Treasury or his delegate the amount which the person against whom the tax is assessed could have advanced to him by such organization 90 days after service of notice of levy on the organization. However, such amount is increased by the amount of any advance (including contractual interest thereon) made to such person on or after the date such organization had actual notice or knowledge (within the meaning of section 6323(i)(1) of the code, as added by section 101(a) of the bill) of the existence of the lien with respect to which such levy is made, other than an advance (including contractual interest thereon) made automatically to maintain such contract in force under an agreement entered into before the organization had such notice or knowledge.

Usually, the amount to be paid in satisfaction of the levy is the cash loan value of the delinquent taxpayer's contract 90 days after the date on which the notice of levy is served on the insurer. However,

the amount to be paid is increased by the amount of any so-called policy loan (including contractual interest thereon) made by the insurer to the delinquent taxpayer at any time after the insurer has actual notice or knowledge of the existence of the lien and before the satisfaction of the levy. The insurer may, nevertheless, make so-called automatic premium loans at any time to maintain the contract in force if the automatic premium loan agreement between the insurer and the delinquent taxpayer was entered into at any time before the date of service of notice of levy on the insurer.

The satisfaction of a levy with respect to a life insurance or endowment contract will not, of course, discharge the contract from the tax lien since the delinquent taxpayer still has a property interest in the policy. Your committee anticipates that many taxpayers will utilize the 90-day period after levy to arrange for the transfer of their contracts to their intended beneficiaries and for the subsequent discharge of such contracts from the tax lien under the provisions of section 6325 of the code (relating to release of lien or discharge of property, as amended by section 103(a) of the bill). Any transferee may, ordinarily, secure the discharge of the contract by paying to the Government the amount of the cash surrender value of the contract at the time the certificate of discharge is issued, and continue the contract in force by paying the premiums.

Enforcement proceedings.—Paragraph (3) of new section 6332(b) provides that the satisfaction of a levy by an insuring organization under new section 6332(b)(2) of the code shall be without prejudice to any civil action for the enforcement of any Federal tax lien with respect to a life insurance or endowment contract. Thus, while the new levy procedure is available to the Government as a collection tool, it is not the exclusive means of subjecting the taxpayer's insurance contracts to the collection of his unpaid taxes. The United States may choose to bring a civil action to enforce the levy, or to foreclose the tax lien in any case in which it is appropriate, so as to reach the cash surrender value of the insurance contract. A tax lien foreclosure action is necessary, for instance, to reach any equity the delinquent taxpayer may have in term and extended term insurance.

Paragraph (3) of section 104(b) of the bill redesignates present section 6332(c) of the code (relating to person defined) as section 6332(e).

Paragraph (4) of section 104(b) of the bill amends section 6332 of the code (relating to surrender of property subject to levy) by inserting new subsections (c) and (d) after section 6332(b) (as amended by sec. 104(b)(2) of the bill).

Enforcement of levy.—Present section 6332(b) of the code provides, in substance, that a person who fails or refuses to honor a levy is liable for a penalty in an amount equal to the value of the property or rights to property subject to levy which such person failed or refused to surrender to the Secretary of the Treasury or his delegate. The designation of this amount as a penalty has caused confusion. It is not entirely clear under present law whether such amounts are to be credited against the tax liability of the person with respect to whom the levy was made. The Internal Revenue Service has long recognized that a recovery in a suit to enforce a levy should normally be credited against the outstanding liability of the taxpayer with respect to whom the levy was made. (I.T. 2577, X–1 Cum. Bull. 3C0 (1931).) However, in some circumstances it is appropriate

to impose a penalty, not so creditable, upon a person who unreasonably fails or refuses to honor a levy.

Extent of personal liability.—Paragraph (1) of new section 6332(c) clarifies the extent of the personal liability of a person upon whom a levy is made and codifies the rule of I.T. 2577 that a recovery in such a suit to enforce a levy shall be credited to the account of the delinquent taxpayer. New paragraph (1) provides that any person who fails or refuses to surrender any property or rights to property, subject to levy, upon demand by the Secretary of the Treasury or his delegate, shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of taxes for the collection of which levy has been made, together with costs and interest on such sum at the rate of 6 percent per annum from the date of levy. Any amount (other than costs) recovered under new section 6332(c)(1) of the code shall be credited against the tax liability for the collection of which the levy was made.

Penalty for violation.—Paragraph (2) of new section 6332(c) imposes a 50-percent penalty, in addition to the personal liability described in new section 6332(c)(1), upon any person who fails or refuses without reasonable cause to honor a levy. New paragraph (2) provides that, in addition to the personal liability imposed by new section 6332(c)(1), if any person required to surrender property or rights to property fails or refuses to surrender such property or rights to property without reasonable cause, such person shall pay a penalty equal to 50 percent of the amount recoverable under new section 6332(c)(1). No part of the penalty imposed by new paragraph (2) shall be credited against the tax liability for the collection of which levy was made.

The penalty is not applicable in cases in which a bona fide dispute exists concerning the amount of the property to be surrendered pursuant to a levy or over the legal effectiveness of the levy. For example, the person levied upon may be obligated to make a wage payment to the delinquent taxpayer at a future date. If a levy is made upon such person, "reasonable cause" might exist to refuse to honor the levy. If, however, a court decides in a later enforcement suit that the levy is applicable to the payment, then reasonable cause would usually not exist to refuse to honor a levy made under similar circumstances with respect to a later, similar payment.

Effect of honoring levy.—New section 6332(d) makes clear the legal effect of honoring a levy. A person levied upon, who honors a levy and surrenders to the Secretary of the Treasury or his delegate property or rights to property with respect to which the levy is made is discharged from any obligation or liability to the taxpayer with respect to the property surrendered. New subsection (d) provides that any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the Secretary of the Treasury or his delegate, surrenders such property or rights to property (or discharges such obligation) to the Secretary of the Treasury or his delegate (or who pays a liability under new section 6332(c)(1)) (relating to extent of personal liability) shall be discharged from any obligation or liability to the delinquent taxpayer with respect to such property or rights to property arising from such surrender or payment.

New subsection (d) also provides that if an insuring organization satisfies a levy with respect to a life insurance or endowment contract pursuant to new section 6332(b) (relating to special rule for life insurance and endowment contracts, as added by sec. 104(b)(2) of the bill), such organization shall be discharged from any obligation or liability to any beneficiary of such contract arising from such surrender or payment, in addition to being discharged from any obligation or liability to the insured.

New subsection (d) does not relieve from liability any person who mistakenly surrenders to the United States property or rights to property not properly subject to levy. The owners of mistakenly surrendered property may, however, secure from the United States the administrative relief provided for in section 6343(b) of the code (relating to return of property, as added by sec. 104(i)(3) of the bill) or may bring suit to recover their property under section 7426 of the code (relating to civil actions by persons other than taxpayers, as added by sec. 110(a) of the bill).

(*c*) *Property exempt from levy*

Section 6334(a) of the code (relating to enumeration) describes the property of a taxpayer which is exempt from levy. Subsection (c) of section 104 of the bill amends section 6334(a) of the code by striking out the words "or Territory" in paragraph (4) thereof, and by adding new paragraph (6) describing certain annuity and pension payments which are already exempt from levy under other Federal laws, and new paragraph (7) which exempts workmen's compensation benefits from levy.

Certain annuity and pension payments.—New paragraph (6) of section 6334(a) exempts from levy annuity or pension payments under the Railroad Retirement Act, as amended, benefits under the Railroad Unemployment Insurance Act, special pension payments received by a person whose name has been entered on the U.S. Army, Navy, Air Force, and Coast Guard Medal of Honor roll (38 U.S.C. 562), and annuities based on retired or retainer pay under chapter 73 of title 10 of the United States Code (relating to retired serviceman's family protection plan).

New paragraph (7) of section 6334(a) exempts from levy any amount paid to an individual as workmen's compensation, including any portion thereof payable with respect to dependents, under a workmen's compensation law of the United States, any State, the District of Columbia, or the Commonwealth of Puerto Rico.

(*d*) *Publication of notice of sale*

Section 104(d) of the bill amends section 6335(b) of the code (relating to notice of sale of seized property). Section 6335(b) presently requires, in part, that the Secretary of the Treasury or his delegate cause a public notice of the sale of seized property to be published in a newspaper published within the county in which the property to be sold was seized. Section 6335(b) as amended allows the publication of such notice of sale either in a newspaper published within the county in which the property to be sold was seized, or in a newspaper generally circulated in that county. For example, if a newspaper of general circulation in a county will reach more potential bidders for the property to be sold than a newspaper published within the county, or if there is a newspaper of general circulation within the

county but no newspaper published within the county, the Secretary of the Treasury or his delegate may use this provision and cause public notice of sale to be given in the newspaper of general circulation within the county.

(*e*) *Redemption period*

Section 104(e) of the bill amends section 6337(b)(1) of the code (relating to period for redemption of real estate after sale). Section 6337(b)(1) presently provides that the owners of any real property sold pursuant to section 6335 of the code (relating to sale of seized property), their heirs, executors, or administrators, or any person having any interest in or a lien on such property, or any person in their behalf, may redeem the real property sold, or any particular tract thereof, at any time within 1 year after the sale of the property. Section 6337(b)(1) is amended to reduce the period for redemption from 1 year to 120 days.

(*f*) *Preparation of deed*

Section 104(f) of the bill amends section 6338(c) of the code (relating to real property purchased by United States). Section 6338(c) presently requires that the appropriate U.S. attorney prepare and approve as to form any deed to real property declared purchased by the United States at a sale pursuant to section 6335 of the code (relating to sale of seized property). Such deed is executed and recorded by the Secretary of the Treasury or his delegate. Section 6338(c) as amended eliminates the requirement that the U.S. attorneys prepare and approve the form of such deeds.

(*g*) *Discharge of junior encumbrances*

Section 104(g) of the bill amends section 6339 of the code (relating to legal effect of certificate of sale of personal property and deed of real property) by adding new subsections (c) and (d) at the end thereof. New subsection (c) of section 6339 provides a statutory rule concerning the legal effect of a sale of seized property under section 6335 of the code upon liens on such property which are junior to the Federal tax lien. New subsection (d) of section 6339 provides cross-references.

Effect on junior encumbrances.—New section 6339(c) provides that a certificate of sale of personal property given or a deed to real property executed by the Secretary of the Treasury or his delegate pursuant to section 6338 of the code (relating to certificate of sale and deed of real property, as amended by sec. 104(f) of the bill) shall discharge such property from all liens, encumbrances, and titles over which the lien of the United States with respect to which the levy was made had priority. Thus, a mortgage on real property executed after notice of a Federal tax lien had been filed would be extinguished when the Secretary of the Treasury or his delegate executes a deed to such real property to a purchaser thereof at a sale pursuant to section 6335 of the code (relating to sale of seized property) following the seizure of such property by the United States. New section 6339(c) codifies the principles of *Blacklock* v. *United States*, 208 U.S. 75 (1908), and *Commercial Credit Corp.* v. *Schwartz*, 130 F. Supp. 524 (E.D. Ark. 1955). The proceeds of such a sale will, of course, be distributed in accordance with the priority of the liens, encumbrances, or titles.

(h) Application of proceeds of levy and sale

Section 104(h) of the bill amends section 6342(a) of the code (relating to collection of liability). Present section 6342(a) contains rules for the application of amounts realized by the Government in connection with levy proceedings. Section 6342(a) as amended expands the applicability of those rules to include proceeds resulting from the ultimate sale to third parties of real property redeemed by the United States when the redemption was pursuant to a lien arising under the Internal Revenue Code. In addition, section 6342(a) as amended makes clear that the 50-percent penalty imposed under section 6332(c)(2) of the code (relating to penalty for violation, as added by sec. 104(b)(4) of the bill) is not credited against the taxpayer's unpaid liability.

Section 6342(a)(1) is amended by striking out the words "under this subchapter" to make clear that expenses need not arise under subchapter D of chapter 64 of the code (relating to seizure of property for collection of taxes) in order to be included as an expense of sale. For example, for purposes of determining the application of the proceeds of a sale of real property, such expenses may include the amount paid by the United States to redeem such property.

Section 6342(a)(3) as amended permits the amount of the proceeds remaining after the application of the rules of paragraphs (1) and (2) of section 6342(a), as amended, to be applied against the tax liability in a case where a sale of redeemed property was conducted. Accordingly, any surplus proceeds (including those from the sale of redeemed property) remaining after the application of the rules of section 6342(a), as amended, will be distributed in accordance with the provisions of present section 6342(b) (relating to surplus proceeds).

(i) Return of property

Section 104(i) of the bill amends section 6343 of the code (relating to authority to release levy) to authorize the Secretary of the Treasury or his delegate to return to its rightful owner any property which has been wrongfully levied upon by the United States. Section 104(i) adds a new subsection (b) to present section 6343, makes a conforming change in the heading, and designates the existing language of section 6343 as subsection (a) thereof.

New section 6343(b) provides that if the Secretary of the Treasury or his delegate determines that property has been wrongfully levied upon, it shall be lawful for the Secretary of the Treasury or his delegate to return (1) the specific property levied upon, (2) an amount of money equal to the amount of money levied upon, or (3) an amount of money equal to the amount received by the United States from a sale of such property. If the United States is in possession of such property, the property may be returned at any time. An amount equal to the amount of money levied upon or received from a sale of such property may be returned at any time before the expiration of 9 months from the date of such levy. For purposes of section 6343(b)(3), if such property is declared purchased by the United States at a sale pursuant to section 6335(e) of the code (relating to manner and conditions of sale), the United States shall be treated as having received the minimum price, determined by the Secretary of the Treasury or his delegate before the sale, or (if larger) the amount received by the United States from the resale of such property.

(j) Clerical amendment

Section 104(j) of the bill amends the table of sections for subchapter D of chapter 64 of the code to reflect the new heading for section 6343 of the code (as changed by section 104(i)(1) of the bill).

SECTION 105. LIABILITY FOR WITHHELD TAXES

(a) Effect on third parties

Section 105(a) of the bill amends chapter 25 (relating to general provisions relating to employment taxes) of subtitle C of the code by adding at the end thereof a new section 3505. New section 3505 imposes a personal liability for unpaid taxes which are required to be deducted and withheld from wages (1) upon persons who pay directly the wages of the employees of another person; and (2) upon persons who supply funds to employers for the specific purpose of paying the wages due employees of such employer, where the supplier of the funds has actual notice or knowledge that the employer does not intend or will not be able to make timely payment of the taxes required to be withheld from the employees' wages.

SECTION 3505. LIABILITY OF THIRD PARTIES PAYING OR PROVIDING FOR WAGES

(a) Direct payment by third parties

Subsection (a) of new section 3505 provides that, for purposes of section 3102 of the code (relating to deduction of Federal Insurance Contribution Act tax from wages), section 3202 of the code (relating to deduction of Railroad Retirement Tax Act tax from compensation), section 3402 of the code (relating to income tax collected at source), and section 3403 of the code (relating to liability for tax), if a lender, surety, or other person, who is not an employer under such sections with respect to an employee or group of employees, pays wages directly to such employee or group of employees, employed by one or more employers, or makes such payment to an agent on behalf of such employee or employees, then the lender, surety, or other person shall be liable in his own person and estate to the United States in a sum equal to the taxes (together with interest) required to be deducted and withheld from such wages by such employer.

Subsection (a) imposes a personal liability for such taxes upon any person who pays the wages of the employees of another person, whether the wages are paid directly to the employees or paid to them through an agent. The liability imposed upon the payor is limited to the taxes which are required to be deducted and withheld from the wages of the employees, plus interest from the date the employer's return with respect to such wages is due. For example, if a surety company pays the wage claim of a workman, pursuant to the surety company's payment bond covering a private construction job, the surety company is personally liable for the amount of the taxes that are required to be withheld from such workman's wages as if those wages were paid by his employer.

Your committee understands that the Secretary of the Treasury or his delegate will issue such regulations, instructions, and forms as are necessary to insure that a payor of wages may voluntarily satisfy the personal liability imposed upon him by section 3505(a). However, in

no case will the payor be required to file an employer's tax return with respect to such wages or to furnish statements of withholding tax under section 6051 of the code (relating to receipts for employees). The employer's responsibility to file such returns and furnish such statements remains unchanged.

In the event a payor does not voluntarily satisfy the liability imposed by section 3505(a), the United States may collect such liability by appropriate civil proceeding.

(b) Personal liability where funds are supplied

Subsection (b) of new section 3505 imposes a personal liability for certain unpaid taxes which are required to be deducted and withheld from wages upon persons who supply funds to employers for the specific purpose of paying wages due employees of such employers where the supplier of the funds has actual notice or knowledge that the employer does not intend or will not be able to make timely payment or deposit of such wages.

Section 3505(b) provides that if a lender, surety, or other person supplies funds to or for the account of an employer for the specific purpose of paying wages of the employees of such employer, with actual notice or knowledge (within the meaning of section 6323(i)(1) of the code, as added by section 101(a) of the bill) that such employer does not intend to or will not be able to make timely payment or deposit of the amounts of tax required by subtitle C of the Internal Revenue Code (relating to employment taxes) to be deducted and withheld by such employer from such wages, such lender, surety, or other person shall be liable in his own person and estate to the United States in a sum equal to such amounts of tax (together with interest) which are not paid over to the United States by such employer with respect to such wages. However, the liability of such lender, surety, or other person shall be limited to an amount equal to 25 percent of the amount supplied to or for the account of such employer for such purpose.

Personal liability is imposed by section 3505(b) only when two requisite conditions are met. First, the supplier of funds must advance the funds to or for the account of an employer for the specific purpose of paying wages of the employer's employees. Second, at the time such funds are advanced, the supplier of funds must have actual notice or knowledge, within the meaning of section 6323(i)(1), that the employer to whom the funds are advanced does not intend to, or will not be able to, make timely payment or deposit of the taxes applicable to such wages. Funds are advanced for the specific purpose of paying wages of the employer's employees where the supplier of funds, at the time of such advance, knows that the funds are to be used for payment of wages. Thus, section 3505(b) does not apply to an ordinary working capital loan made to an employer even though the lender knows that part of the funds advanced may be used to make wage payments in the ordinary course of business. Consequently, such section does not impose upon lenders an obligation to determine the specific use of any working capital loan they make or the ability of the borrower to pay the taxes. Section 3505(b) is applicable, however, in a case where the supplier of funds knows that the funds are to be used to pay net wages, even though the written agreement under which the advances are made states a different purpose.

The burden of proving that the supplier of funds has actual notice or knowledge, at the time funds are advanced, that the employer does not intend to, or will not be able to, make timely payment or deposit of the applicable taxes, is on the United States.

The liability imposed upon the payor of wages is limited to the taxes which are required to be deducted and withheld from the wages of the employees plus interest from the date the employer's return with respect to such wages is due. In any event, such liability may not exceed 25 percent of the amounts advanced to the employer for the specific purpose of paying wages of the employer's employees.

As in the case of section 3505(a), your committee understands that the Secretary of the Treasury or his delegate will issue such regulations, instructions, and forms as are necessary to insure that a supplier of funds may voluntarily satisfy the personal liability imposed upon him by section 3505(b). In no case will the supplier of funds be required to make an employer's tax return with respect to such wages or furnish statements of withholding tax under section 6051 of the code (relating to receipts for employers). The employer's responsibility to file such returns and furnish such statements remains unchanged.

In the event a supplier of funds does not voluntarily satisfy the liability imposed by section 3505(b), the United States may collect such liability by appropriate civil proceeding.

(*c*) *Effect of payment*

Section 3505(c) provides that any amount paid to the United States pursuant to section 3505 shall be credited against the unpaid tax liability of the employer with respect to whose employees' wages such amounts are due.

SECTION 105. LIABILITY FOR WITHHELD TAXES (Continued)

(*b*) *Performance bonds of contractors for public buildings or works*

Section 105(b) of the bill amends the Miller Act. The Miller Act requires that certain contracts for the construction, alteration, and repair of any public building or public work of the United States be accompanied by a performance bond protecting the United States and a payment bond protecting persons furnishing labor and materials for the project. The courts have uniformly held that a promise of a surety to guarantee the payment of wages is not a promise to guarantee the payment of the withholding taxes applicable to those wages. See, for example, *United States* v. *Crosland Construction Co.*, 217 F. 2d 275 (4th Cir. 1954). Surety bonds required by the Miller Act in connection with Federal construction contracts do not now guarantee the payment of such taxes. Section 105(b) of the bill amends the Miller Act to require that performance bonds include a guarantee of the payment of such taxes. Under section 114(c)(2) of the bill, this will be effective only with respect to performance bonds issued in connection with contracts entered into pursuant to invitations for bids issued after June 30, 1967.

Section 105(b) of the bill amends the first section of the Miller Act (act of August 24, 1935 (49 Stat. 793; 40 U.S.C. § 270a)) by adding at the end thereof a new subsection (d). New subsection (d) provides that every performance bond required under the first section of

the Miller Act shall specifically provide coverage for taxes imposed by the United States which are collected, deducted, or withheld from wages paid by the contractor in carrying out the contract with respect to which such bond is furnished. However, the United States must give the surety or sureties on the performance bond written notice, with respect to any such unpaid taxes attributable to any period, within 90 days after the date when such contractor in fact files a return for such period, except that no such notice shall be given more than 180 days from the date when a return for the period was required to be filed under the Internal Revenue Code of 1954. No suit on the performance bond for such taxes shall be commenced by the United States unless notice is given in such manner, and no such suit shall be commenced after the expiration of 1 year after the day on which such notice is given. New subsection (d), therefore, guarantees to the United States the payment of the withholding taxes applicable to the wages paid by a contractor on a Federal construction project if the United States gives the surety on the bond notice that the taxes have not been paid over. The obligation of the surety on a performance bond must guarantee the payment of taxes which are required to be collected, deducted, or withheld from wages by the contractor, whether or not the contractor does in fact collect, deduct, or withhold such taxes. The United States must give the notice within 90 days from the date the contractor files his return for the period for which he is required to account to the United States. Under the Code and applicable regulations, this period is normally a calendar quarter. The notice must, however, be given no later than 180 days from the date when such return was required to be filed, whether or not such return was ever filed. The notice requirement applies to each calendar quarter or other taxable period.

If the United States is required to enforce the obligation of the performance bond relating to withholding taxes by bringing suit against the surety, such suit must be commenced by the United States within 1 year after the day on which notice of an unpaid tax liability is given to the surety. Thus, if the surety is given timely notice on July 1, 1968, that the contractor has failed to pay over to the United States the taxes applicable to a calendar quarter, then the United States must commence suit on or before July 1, 1969, to enforce the obligation of the surety under the performance bond.

(*c*) *Clerical amendment*

Section 105 (c) of the bill amends the table of sections for chapter 25 of subtitle C of the Code to add the heading of new section 3505 of the Code.

SECTION 106. SUSPENSION OF RUNNING OF PERIOD OF LIMITATION

(*a*) *Assets of estate of decedent or incompetent*

Section 106(a) of the bill amends section 6503(b) of the Code (relating to assets of taxpayer in control or custody of court). Section 6503(b) presently provides that the period of limitation on collection after assessment shall be suspended for the period the assets of the taxpayer, other than the estate of a decedent or of an incompetent, are in the control or custody of a court, and for 6 months

thereafter. Section 6503(b) as amended eliminates the existing exception for the estate of a decedent or of an incompetent from the statutory suspension of the period of limitations on collection, and also eliminates the reference to territorial courts. Thus, the period of limitations on collection after assessment is suspended for the period that the assets of the estate of a decedent or of an incompetent are in the control or custody of the court in any Federal or State court proceeding, and for 6 months thereafter.

(*b*) *Collection hindered by absence of taxpayer*

Section 106(b) of the bill amends section 6503(c) of the Code (relating to location of property outside the United States or removal of property outside the United States), by substituting, for the provisions of present law, a new subsection (c) which provides for the suspension of the running of the period of limitations on collection after assessment in certain cases in which the taxpayer is outside the United States.

New section 6503(c) provides that the running of the period of limitations on collection after assessment prescribed in section 6502 (relating to collection after assessment) shall be suspended for the period during which the taxpayer is outside the United States if such period of absence is for a continuous period of at least 6 months. If a taxpayer has been outside the United States for a continuous period of at least 6 months, and at the time of his return to the United States the period of limitations on collection after assessment prescribed in section 6502 would expire before the expiration of 6 months from the date of his return, such period of limitations shall not expire before the expiration of 6 months from the date of his return. Thus, where a taxpayer has been absent from the United States for a continuous period of at least 6 months, the United States will always have at least 6 months subsequent to the date of his return within which to collect an unpaid assessed tax liability.

(*c*) *Wrongful seizure of property of third parties*

Section 106(c) of the bill redesignates present section 6503(g) of the Code (relating to cross references) as section 6503(h) and inserts after section 6503(f) of the Code a new subsection (g). New section 6503(g) provides that the running of the period of limitations on collection after assessment prescribed in section 6502 of the Code (relating to collection after assessment) shall be suspended for a period equal to the period from the date property (including money) of a third party is wrongfully seized or received by the Secretary of the Treasury or his delegate to the date the Secretary of the Treasury or his delegate administratively returns such property, pursuant to new section 6343(b) of the Code, or the date on which a judgment secured pursuant to new section 7426 of the Code with respect to such property becomes final, and for 30 days thereafter. New subsection (g) only suspends the period of limitations on collection after assessment with respect to the amount of such assessment, if any, equal to the amount of money or the value of specific property returned.

SECTION 107. PROCEEDINGS WHERE UNITED STATES HAS TITLE TO PROPERTY

(*a*) *Action to quiet title*

The United States does not, at present, have express authority to bring an action to quiet title to property to which the United States has acquired title through the enforcement of a Federal tax lien. Section 107(a) of the bill amends section 7402 of the code (relating to jurisdiction of district courts) to provide expressly that the U.S. district courts shall have jurisdiction of such suits. Section 107(a) of the bill amends section 7402 of the code by redesignating present subsection (e) as subsection (f) and by inserting after subsection (d) a new subsection (e). New section 7402(e) provides that the U.S. district courts shall have jurisdiction of any action brought by the United States to quiet title to property if the title claimed by the United States to such property was derived from the enforcement of a lien arising under the Internal Revenue Code.

(*b*) *Sale bids*

Section 107(b) of the bill amends section 7403(c) of the Code (relating to adjudication and decree) by adding at the end thereof a new sentence. The new sentence provides that if, in a tax lien foreclosure proceeding brought by the United States, property is sold to satisfy a first lien held by the United States, the United States may bid, at the sale of such property, such sum (not exceeding the amount of its first lien with expenses of sale) as the Secretary of the Treasury or his delegate directs. This authority is similar to the authority contained in existing section 195 of title 31 and section 2410 of title 28 of the United States Code.

SECTION 108. INTERVENTION BY UNITED STATES

Section 108 of the bill amends section 7424 of the Code (relating to civil action to clear title to property) by replacing such section with a new section 7424, specifically granting the United States the right to intervene in any civil action to assert a Federal tax lien on property which is the subject of such action.

New section 7424 provides that if the United States is not a party to a civil action or suit, the United States may intervene in such action or suit to assert any lien arising under the Internal Revenue Code on the property which is the subject of such action or suit. In any case in which the United States intervenes, the provisions of section 2410 (other than subsection (b) thereof) of title 28 of the United States Code (relating to joinder of the United States in certain proceedings) and the provisions of section 1444 of title 28 of the United States Code (relating to removal of foreclosure actions) shall apply as if the United States had originally been named a party defendant in such action or suit. In any case in which the United States moves to intervene in such action, and such motion is denied, the adjudication in such civil action or suit shall have no effect upon the Federal tax lien. Thus, such lien may be enforced against such property by levy or foreclosure.

SECTION 109. DISCHARGE OF LIENS HELD BY UNITED STATES

Section 109 of the bill amends subchapter B of chapter 76 of the code (relating to proceedings by taxpayers) by redesignating present section 7425 of the code (relating to cross references) as section 7427 of the code and by inserting after section 7424 of the code (as amended by sec. 108 of the bill) a new section 7425.

New section 7425 provides statutory rules relating to the extinguishment of Federal tax liens on property sold in certain judicial and nonjudicial sales. The rules for the divestment of Federal tax liens on property involved in judicial proceedings in which the United States is joined as a party are contained in 28 U.S.C. 2410(a) (as amended by sec. 201 of the bill). New section 7425 supplements 28 U.S.C. 2410(a) by providing uniform Federal rules for determining the effect on a Federal tax lien of (1) judicial proceedings similar to those which may be brought under 28 U.S.C. 2410(a) in cases where the United States is not joined as a party, and (2) nonjudicial sales of property, whether or not the United States is given notice of such sale.

SECTION 7425. DISCHARGE OF LIENS

(*a*) *Judicial proceedings*

Subsection (a) of section 7425 deals with the effect of formal judicial proceedings concerning real and personal property on which the United States has or claims a Federal tax lien when the United States is not joined as a party in such proceedings. Rules are provided to cover the situation (1) in which a notice of lien is on file when the proceeding is commenced, and (2) in which notice of lien has not been filed when the proceeding is commenced.

Subsection (a) of section 7425 provides rules where the United States is not joined as a party in any civil action or suit described in 28 U.S.C. 2410(a) (relating to joinder of the United States in certain proceedings, as amended by sec. 201 of the bill). The suits described in 28 U.S.C. 2410(a) include an action or suit (1) to quiet title to, (2) to foreclose a mortgage or other lien upon, (3) to partition, (4) to condemn, or (5) of interpleader or in the nature of interpleader with respect to, real or personal property on which the United States has or claims a Federal tax lien.

A judgment rendered in such an action or suit, or a judicial sale pursuant to such a judgment, shall (1) if notice of the Federal tax lien has been filed in the place provided by law for such filing at the time the action or suit is commenced, be made subject to and without disturbing the lien of the United States; or (2) if no notice of the Federal tax lien has been so filed or if the law makes no provision for such filing, have the same effect with respect to the discharge or divestment of the Federal lien as may be provided with respect to such matters by the local law of the place where such property is situated.

However, if a judicial sale of property pursuant to a judgment in any civil action or suit to which the United States is not a party discharges a Federal tax lien, the United States may nevertheless claim the proceeds (after provision for the costs of sale) of such sale at any time before the distribution of the proceeds is ordered by the court having

jurisdiction of such action or suit. The claim of the United States has the same priority against such proceeds as the Federal tax lien had against the property sold.

Thus, where the United States is not joined as a party, different rules are applicable to determine the effect of a judgment in a civil action or suit, or a judicial sale pursuant to such a judgment, depending upon whether a notice of the Federal tax lien has been filed before the action was commenced. If a notice of lien has been filed before such action is commenced, a judgment or judicial sale in the action is made subject to and without disturbing the Federal tax lien.

If notice of the Federal tax lien has not been filed before such action is commenced, or (as in the case of special Federal estate and gift tax liens) the law makes no provision for such filing, a judgment or judicial sale has the same effect with respect to the discharge or divestment of the Federal tax lien as the local law of the place where the property subject to the lien is situated provides with respect to such matters. For example, if, on the date a first mortgagee of real property brings a foreclosure action, notice of a Federal tax lien is not on file, and if local law provides that junior liens on real property will be discharged by a judicial sale pursuant to a judgment in a foreclosure action, then a Federal tax lien on the property will be discharged by the judicial sale. This result is the same whether the lien arose before or after the date of commencement of the foreclosure action and whether notice of the tax lien was filed at any time after the commencement of the foreclosure action.

However, the last sentence of section 7425(a) provides that the United States may, in any case in which a judicial sale discharges its lien, claim the net proceeds of the sale, prior to the time they are distributed. This claim may be made by intervening in the foreclosure action pursuant to section 7424 of the code (relating to intervention, as amended by sec. 108 of the bill). The claim of the United States is treated as having the same priority with respect to such proceeds as the Federal tax lien had with respect to the property which was discharged from the lien by the judicial sale.

(*b*) *Other sales*

Subsection (b) of section 7425 deals with the effect of sales of property (other than in formal judicial proceedings) on which the United States has or claims a Federal tax lien, or a title derived from the enforcement of a Federal tax lien, when the sale is made pursuant to (1) an instrument creating a lien on the property sold, (2) a confession of judgment on the obligation secured by an instrument creating a lien on the property sold, or (3) a statutory lien on the property sold. Rules are provided to cover the situation in which a notice of tax lien was filed or a title recorded more than 30 days before the date of such sale, and the situation in which notice of the tax lien was not filed or title had not been recorded more than 30 days before the date of such sale.

Notwithstanding section 7425(a), section 7425(b) specifies the effect that a sale made pursuant to either an instrument creating a lien on property, a confession of judgment on the obligation secured by such an instrument, or a nonjudicial sale under a statutory lien on property,

has with respect to a Federal tax lien or a title derived from the enforcement of such a lien, on the property sold.

1. Under section 7425(b)(1), if notice of the Federal tax lien was filed, or the title was recorded, in the place provided by law, more than 30 days before the sale, and the United States is not given notice of the sale (in the manner prescribed in sec. 7425(c)(1)), the sale shall be made subject to and without disturbing the lien or title of the United States. However, this rule does not apply in any case in which the United States consents to the sale (in accordance with the provisions of sec. 7425(b)(2)) notwithstanding that the United States did not receive the required notice of the sale. Similarly, the rule does not apply to the sale of perishable goods (in accordance with sec. 7425(c)(3)).

2. Under section 7425(b)(2)(A), if notice of the lien was not filed, or the title was not recorded, in the place provided by law, more than 30 days before the sale, the sale shall have the same effect with respect to the discharge or divestment of the lien or title as may be provided by local law with respect to junior liens. Under section 7425(b)(2)(B), the same result obtains if the law makes no provision for the filing of a Federal tax lien, as in the case of special estate and gift tax liens imposed by section 6324 of the code. In any case in which notice of the sale is given to the Secretary of the Treasury or his delegate not less than 25 days prior to the sale (in the manner prescribed in sec. 7425(b)(2)(C)) the same result follows.

Where, under the provisions of section 7425(b), a sale of property is made without affecting or disturbing the lien or title of the United States, the United States may enforce the lien against such property by administrative or judicial proceedings or may take any appropriate action with respect to its title.

(*c*) *Special rules*

Section 7425(c) prescribes the manner and form of giving notice to the United States of other sales of property (described in sec. 7425(b)), and provides special rules for cases in which the United States consents to such a sale of property and for the sale of perishable goods.

Notice.—Paragraph (1) of section 7425(c) provides that notice of a sale to which section 7425(b) applies shall be given, in accordance with regulations prescribed by the Secretary of the Treasury or his delegate, in writing, by registered or certified mail or by personal service, not less than 25 days prior to such sale, to the Secretary of the Treasury or his delegate.

Your committee understands that the regulations issued by the Secretary of the Treasury or his delegate may include rules requiring that the notice indicate (1) the time, place, and terms of the sale, (2) the nature of the interest or lien of the United States, (3) the name and address of the delinquent taxpayer, (4) which internal revenue office caused the notice of tax lien to be filed, or instrument evidencing an interest in the property to be recorded, and (5) the date and place where such notice of tax lien was filed or such instrument was recorded. The requirements must be satisfied with respect to each notice of tax lien filed, and with respect to each recorded instrument evidencing an interest of the United States in the property.

Consent to sale.—Paragraph (2) of section 7425(c) contains an exception to the general rule of section 7425(b) that property in which

the United States has an interest, notice of which has been filed or recorded, shall be sold subject to the lien or title of the United States unless notice of the sale is given to the United States in the prescribed manner. Paragraph (2) provides that, notwithstanding the notice requirement of section 7425(b)(2)(C), a sale (described in sec. 7425(b)) of property shall discharge or divest such property of the lien or title of the United States if the United States consents to the sale of such property free of such lien or title.

It is contemplated that the Secretary of the Treasury or his delegate will prescribe regulations authorizing consent to a sale of property in appropriate cases when adequate protection is afforded the rights of the United States. Consent to a sale is, in any case, discretionary on the part of the Secretary of the Treasury or his delegate. The Secretary of the Treasury or his delegate has been authorized under section 6325(b)(3) of the code (as added by sec. 103(a) of the bill) to discharge property subject to a tax lien when the proceeds of sale of the discharged property are held subject to the liens and claims of the United States. While this discharge procedure may be used whenever appropriate, it does not preclude use of the consent procedure under section 7425(c)(2).

Sale of perishable goods.—Paragraph (3) of section 7425(c) contains a second exception to the general rule of section 7425(b) that property in which the United States has an interest, notice of which has been filed or recorded, shall be sold subject to the lien or title of the United States unless notice of the sale is given to the United States in the manner prescribed in section 7425(c)(1). Paragraph (3) provides that, notwithstanding the notice requirement of section 7425(b)(2)(C), a sale described in section 7425(b) of property liable to perish or become greatly reduced in value by keeping, or which cannot be kept without great expense, shall discharge or divest such property of the lien or title of the United States if written notice of the sale is given, in accordance with regulations prescribed by the Secretary of the Treasury or his delegate, in writing, by registered or certified mail, or by personal service to the Secretary of the Treasury or his delegate before such sale. The proceeds (exclusive of costs) of such sale shall be held as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as the liens and claims of the United States had with respect to the property sold, for not less than 30 days after the date of such sale.

The seller of the property has the responsibility to see that the proceeds of sale are held subject to the liens and claims of the United States for not less than 30 days after the date of such sale. If the seller fails to so hold the proceeds, he will be personally liable to the United States for an amount equal to the interest of the United States in such fund. However, even if the proceeds of such sale are not so held by the seller, but all the other provisions of section 7425(c)(3) are satisfied, the buyer of the property at the sale takes the property free of the liens or claims of the United States. The type of goods which may be sold under this paragraph are the same as those that the Secretary of the Treasury or his delegate is authorized to sell pursuant to section 6336 of the code (relating to sale of perishable goods) and section 6863 (b)(3)(B)(ii) of the code (relating to exceptions to stay of sale of seized property pending Tax Court decision).

(d) Redemption by United States

Subsection (d) of section 7425 provides that the United States may redeem real property sold in sales described in section 7425(b) and prescribes Federal rules concerning the procedures relating to such redemptions.

Right to redeem.—Paragraph (1) of section 7425(d) provides that if, at a sale to which section 7425(b) is applicable, real property is sold to satisfy a lien prior to that of the United States, the Secretary of the Treasury or his delegate may redeem such property within the period of 120 days from the date of the sale or the period allowable for redemption under local law, whichever is longer. Thus, the United States will always have the right to redeem real property sold at a nonjudicial sale, whether or not other lienors have similar rights under local law.

Amount to be paid.—Paragraph (2) of section 7425(d) provides that if the United States exercises its right of redemption under section 7425(d)(1), the United States shall pay the amount prescribed in subsection (d) of section 2410 of title 28 of the United States Code (as amended by sec. 201 of the bill). The amount to be paid by the United States when it redeems real property is, therefore, a uniform amount in all cases, whether the redemption is from the purchaser at a judicial sale of the property or from a purchaser at a nonjudicial sale.

The amount prescribed in section 7425(d)(2) for the redemption of real property by the United States is applicable whether the redemption is made within the 120-day period specified in section 7425(d)(1) or within any longer period allowable under local law.

Certificate of redemption.—Paragraph (3) of section 7425(d) contains uniform Federal rules for perfecting the title of the United States to real property it has redeemed pursuant to a sale described in section 7425(b), and for recording the title acquired.

In general.—Subparagraph (A) of section 7425(d)(3) provides that if the United States exercises its right under section 7425(d)(1) to redeem real property, the Secretary of the Treasury or his delegate shall apply to the officer designated by local law (if such an officer has been designated by local law) for the documents necessary to evidence the fact of redemption and to record title to the redeemed property in the name of the United States. If no such officer has been designated by local law or if the officer designated by local law fails to issue the necessary documents, the Secretary of the Treasury or his delegate is authorized to issue a certificate of redemption for the property redeemed by the United States.

Filing.—Subparagraph (B) of section 7425(d)(3) provides that the Secretary of the Treasury or his delegate shall, without delay, cause either the documents issued by the designated local officer or the certificate of redemption executed by the Secretary of the Treasury or his delegate to be duly recorded in the proper registry of deeds. If a certificate of redemption is issued by the Secretary of the Treasury or his delegate and if the State in which the real property redeemed by the United States is situated has not by law designated an office in which the certificate of redemption may be recorded, the Secretary of the Treasury or his delegate shall file the certificate of redemption in the office of the clerk of the U.S. district court for the judicial district in which the redeemed property is situated.

Effect.—Subparagraph (C) of section 7425(d)(3) provides that such certificate of redemption properly executed shall constitute prima facie

evidence of the regularity of the redemption. When the certificate is recorded, it transfers to the United States all the rights, title, and interest in and to the redeemed property acquired by the person from whom the United States redeems such property by virtue of the sale of such property.

SECTION 110. PROCEEDINGS BY THIRD PARTIES AGAINST THE UNITED STATES

(*a*) *Actions by third parties*

Section 110(a) of the bill amends subchapter B of chapter 76 of the code (relating to proceedings by taxpayers) by inserting after section 7425 (as added by sec. 109 of the bill) a new section 7426. New section 7426 delineates the procedural rights of third parties in cases (1) where the United States has wrongfully levied upon their property, (2) where they claim an interest in surplus proceeds resulting from the sale of property by the United States pursuant to a levy, and (3) where the proceeds of a sale of property have been substituted for such property and are subject to the liens and claims of the United States. In the latter case an action under this section may also be brought by a taxpayer whose property has been sold pursuant to an agreement under section 6325(b)(3) (relating to substitution of proceeds of sale, as added by sec. 103(a) of the bill).

SECTION 7426. CIVIL ACTIONS BY PERSONS OTHER THAN TAXPAYERS

(*a*) *Actions permitted*

Subsection (a) of section 7426 authorizes the institution of three types of suits against the United States. Section 202 of the bill grants the U.S. district courts original jurisdiction over actions brought under section 7426 and determines the venue for such actions.

Wrongful levy.—Paragraph (1) of section 7426(a) provides that if a levy has been made on property, or property has been sold pursuant to a levy, any person other than the taxpayer who claims (1) an interest in or lien on such property, and (2) that such property was wrongfully levied upon by the United States, may bring a civil action against the United States in a U.S. district court seeking such relief as may be granted under section 7426(b). Such action may be brought without regard to whether the property has been surrendered to or sold by the Secretary of the Treasury or his delegate. However, in no case may such action be brought prior to the time that the Secretary of the Treasury or his delegate has in fact levied upon the property.

Surplus proceeds.—Paragraph (2) of section 7426(a) provides that if property has been sold pursuant to a levy, and surplus proceeds have been realized from such sale, any person (other than the taxpayer) who claims (1) an interest in or lien upon such property junior to the lien or interest of the United States, and (2) that he is legally entitled to all or part of such surplus proceeds, may bring a civil action against the United States in a U.S. district court, seeking such relief as may be granted under section 7426(b)(3).

The term "surplus proceeds" means those proceeds realized on a sale of property remaining after the application of the provisions of

of section 6342(a) (relating to collection of liability, as amended by sec. 104(h) of the bill).

Substituted sale proceeds.—Paragraph (3) of section 7426(a) provides that if property has been sold pursuant to an agreement described in section 6325(b)(3), any person (including the taxpayer) who claims to be legally entitled to all or any part of the amount held as a fund pursuant to such agreement, may bring a civil action against the United States in a U.S. district court, seeking such relief as may be granted under section 7426(b)(4). Any person may bring an action pursuant to this paragraph whether or not he was a party to the agreement described in section 6325(b)(3). This permits the United States to be joined as a party in an action seeking to adjudicate the rights of claimants to a fund held pursuant to such agreement.

(*b*) *Adjudication*

Subsection (b) of section 7426 specifies the relief available in actions brought against the United States under section 7426(a). The subsection provides that the U.S. district courts shall have jurisdiction to grant only such of the forms of relief as are specified in paragraphs (1) through (4) of such subsection as may be appropriate in the circumstances of each individual case.

Injunction.—Paragraph (1) of section 7426(b) provides that if the enforcement of a levy or sale of property pursuant to a levy would irreparably injure the rights of a third party in such property, and if the court determines that the rights of such third party in the property are superior to the rights of the United States in such property, the court may grant an injunction to prohibit the enforcement of the levy or to prohibit the sale of such property. The injunctive relief available under this paragraph may only be granted in cases brought under the provisions of section 7426(a)(1) and only after the Secretary of the Treasury or his delegate has in fact levied upon the property.

Recovery of property.—Paragraph (2) of section 7426(b) provides three alternative types of relief which a court may grant to a third party if the court determines that property has been wrongfully levied upon by the United States.

Subparagraph (A) of section 7426(b)(2) provides that the court may order the return of the specific property wrongfully levied upon if the United States is in possession of such property.

Subparagraph (B) of section 7426(b)(2) provides that the court may grant a judgment against the United States for the amount of money wrongfully levied upon (plus interest as provided in sec. 7426(g)(1)).

Subparagraph (C) of section 7426(b)(2) provides that the court may grant a judgment against the United States for an amount not exceeding the amount received by the United States from the sale of property wrongfully levied upon (plus interest as provided in sec. 7426(g)(2)). For purposes of this subparagraph, if the property was purchased by the United States at a sale pursuant to a levy, the United States is treated as having received (1) an amount equal to the minimum price determined under section 6335(e)(1) (relating to minimum price), or (2) if larger, the amount received by the United States from the resale of such property.

The relief available under paragraph (2) of section 7426(b) may only be granted in cases brought under the provisions of section 7426(a)(1).

Surplus proceeds.—Paragraph (3) of section 7426(b) provides that if the court determines that the interest or lien of any party to an action under section 7426 was transferred to the proceeds of sale of property sold pursuant to a levy, the court may grant a judgment against the United States in an amount equal to all or any part of the amount of the surplus proceeds of such sale. The relief available under paragraph (3) of section 7426(b) may only be granted in cases brought under the provisions of section 7426(a)(2). Thus, a third party whose rights are junior to those of the United States in property sold pursuant to levy may recover all or any part of the surplus sale proceeds to which he is legally entitled if the third party's interest or lien was transferred to the proceeds of sale.

Substituted sale proceeds.—Paragraph (4) of section 7426(b) provides that, if the court determines that a party has an interest in or a lien upon an amount held as a fund pursuant to an agreement described in section 6325(b)(3), the court may grant a judgment in an amount equal to all or any part of the amount of such fund. The relief available under paragraph (4) of section 7426(b) may only be granted in cases brought under the provisions of section 7426(a)(3). Under this provision, the court may enter such judgments as are appropriate to distribute the fund to the parties legally entitled thereto.

(*c*) *Validity of assessment*

Subsection (c) of section 7426 provides that, for purposes of an adjudication under section 7426, the assessment of tax upon which the interest or lien of the United States is based shall be conclusively presumed to be valid.

(*d*) *Limitation on rights of action*

Subsection (d) of section 7426 provides that no action may be maintained against any officer or employee of the United States (or former officer or employee) or his personal representative with respect to any acts for which an action could be maintained under section 7426.

(*e*) *Substitution of United States as party*

Subsection (e) of section 7426 provides that if an action, which could be brought against the United States under section 7426, is improperly brought against any officer or employee of the United States (or former officer or employee) or his personal representative, the court shall order, upon such terms as are just, that the pleadings be amended to substitute the United States as a party for such officer or employee, as of the time such action was commenced, upon proper service of process on the United States.

(*f*) *Provision inapplicable*

Subsection (f) of section 7426 provides that the provisions of section 7422(a) of the code (relating to prohibition of suit prior to filing claim for refund) shall not apply to actions under section 7426. It is, therefore, unnecessary for a person to file an administrative claim for refund before bringing an action under section 7426. Although it is not a prerequisite to the commencement of an action under section 7426(a)(1), an administrative claim therefor may be filed seeking the recovery of property wrongfully levied upon, under section 6343(b) of the code (relating to return of property, as added by sec. 104(i)

of the bill). Similarly, an administrative application under section 6342(b) of the code (relating to surplus proceeds) may be filed seeking a distribution of surplus proceeds resulting from a sale of property pursuant to levy, although the filing of such an application is not a prerequisite to the commencement of an action under section 7426(a)(2).

(*g*) *Interest*

Subsection (g) of section 7426 provides that interest shall be allowed at the rate of 6 percent per annum in certain cases where a third party recovers a money judgment against the United States in lieu of the return of specific property wrongfully levied upon.

Paragraph (1) of section 7426(g) provides that in the case of a judgment for the amount of money wrongfully levied upon, granted pursuant to section 7426(b)(2)(B), interest at the rate of 6 percent per annum shall be allowed from the date the Secretary of the Treasury or his delegate receives the money wrongfully levied upon to the date of payment of such judgment. Money wrongfully levied upon is received at the time the Secretary of the Treasury or his delegate acquires possession of such money.

Paragraph (2) of section 7426(g) provides that in the case of a judgment granted pursuant to section 7426(b)(2)(C) for an amount not exceeding the amount received by the United States from the sale of property wrongfully levied upon, interest at the rate of 6 percent per annum shall be allowed from the date of the sale of the property wrongfully levied upon to the date of payment of such judgment.

(*h*) *Cross reference*

Subsection (h) of section 7426 provides a cross reference to section 6532(c) of the code (relating to suits by persons other than taxpayers, as added by sec. 110(b) of the bill).

SECTION 110. PROCEEDINGS BY THIRD PARTIES AGAINST THE UNITED STATES
(Continued)

(*b*) *Period of limitation on suit*

Section 110(b) of the bill amends section 6532 of the code (relating to period of limitation on suits) by adding at the end thereof a new subsection (c) providing a period of limitation applicable to the commencement of suits under section 7426 of the code (relating to civil actions by persons other than taxpayers, as added by sec. 110(a) of the bill).

General rule.—Paragraph (1) of section 6532(c) provides that, except as otherwise provided in section 6532(c)(2), no civil action under section 7426 of the code shall be begun after the expiration of 9 months from the date of the levy or agreement giving rise to such action.

Period when claim is filed.—Paragraph (2) of section 6532(c) provides that if a third party files a timely written request under section 6343(b) for the return of property wrongfully levied upon, the 9-month period prescribed in section 6532(c)(1) shall be extended for a period of 12 months from the date of filing of such request, or for a period of 6 months from the date of mailing by registered or certified mail by the

Secretary of the Treasury or his delegate to the party claimant of a notice of disallowance of the part of the request to which the action relates, whichever is shorter.

(*c*) *Prohibition of suits to restrain assessment or collection*

Section 110(c) of the bill amends section 7421(a) of the code (relating to prohibition of suits to restrain assessment or collection of tax). Section 7421(a) presently provides that, with certain specific exceptions, no suit to restrain the assessment or collection of any tax shall be maintained in any court. Section 7421(a) as amended also excepts, from the general prohibition on suits to restrain the assessment or collection of taxes, injunction suits against the United States authorized by new section 7426 of the code, as added by section 110(a) of the bill. Section 7421(a), as amended by the bill, provides that, except as provided in sections 6212 (a) and (c), 6213(a), and 7426 (a) and (b)(1) of the code, no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

(*d*) *Clerical amendments*

Section 110(d) of the bill makes clerical amendments to the headings of subchapter B of chapter 76 of the code, to the table of sections for such subchapter, and to the table of subchapters for chapter 76 of subtitle F of the code.

SECTION 111. SALE OF PROPERTY ACQUIRED BY UNITED STATES

(*a*) *Personal property acquired*

Section 111(a) of the bill amends section 7505(a) of the code (relating to sale of personal property purchased by the United States). Section 7505(a) presently authorizes the Secretary of the Treasury or his delegate to sell any personal propery purchased for the account of the United States if such property was purchased at a sale of property seized pursuant to levy. Section 7505(a) as amended provides that the Secretary of the Treasury or his delegate may sell personal property acquired by the United States in payment of or as security for debts arising under the internal revenue laws. In addition to personal property purchased by the United States at a sale pursuant to levy, this provision authorizes the Secretary of the Treasury or his delegate to sell personal property acquired by other means in payment of, or as security for the payment of, liabilities with respect to Federal taxes.

(*b*) *Real property redeemed*

Section 111(b) of the bill amends section 7506(a) of the code (relating to persons charged with administration of real estate acquired by the United States). Section 7506(a) does not presently give the Secretary of the Treasury or his delegate clear authority to administer real property acquired by the United States by means of a redemption from a purchaser at a sale of real property subject to a Federal tax lien. Section 7506(a) as amended provides that the Sec-

retary of the Treasury or his delegate may administer real property which has been redeemed by the United States.

(*c*) *Clerical amendments*

Section 111(c) of the bill makes clerical amendments.

SECTION 112. FUND FOR REDEMPTION OF REAL PROPERTY BY UNITED STATES

(*a*) *Creation of fund for redemption of real property*

Section 112(a) of the bill amends subchapter A of chapter 80 of the code by adding a new section 7810 to the code. New section 7810 provides for the creation of a revolving fund for the redemption of real property by the United States.

Establishment of fund.—Subsection (a) of section 7810 establishes a revolving fund under the control of the Secretary of the Treasury or his delegate, which shall be available without fiscal year limitation for all expenses necessary for the redemption, by the Secretary of the Treasury or his delegate, of real property as provided in section 7425(d) of the code (relating to redemption by the United States of real property under sec. 7425(b), as added by sec. 109 of the bill), and section 2410 of title 28 of the United States Code (relating to joinder of the United States in certain proceedings, as amended by sec. 201 of the bill). Section 7810(a) authorizes the appropriation, from time to time, of such sums (not to exceed $1 million in the aggregate) as may be necessary to carry out the purposes of section 7810.

Reimbursement of fund.—Subsection (b) of section 7810 provides that the revolving fund is to be reimbursed from the proceeds of a subsequent sale of real property redeemed by the United States in an amount equal to the amount expended out of the fund to make such redemption.

System of accounts.—Subsection (c) of section 7810 provides that the Secretary of the Treasury or his delegate shall maintain an adequate system of accounts for the revolving fund and prepare annual reports on the basis of such accounts.

(*b*) *Deposit of money received*

Section 112(b) of the bill amends section 7809 (relating to deposit of collections) (1) to include reimbursements to the revolving fund established under new section 7810 among the exceptions to the general rule that the gross amount of all taxes and revenues received under the provisions of the Internal Revenue Code and collections of whatever nature received or collected by authority of any internal revenue law are to be paid daily into the Treasury of the United States, and (2) to provide a deposit fund account for any surplus proceeds (within the meaning of sec. 6342(b) of the code) resulting from any sale under section 7506 of the code of real property redeemed by the United States.

(*c*) *Clerical amendment*

Section 112(c) of the bill makes a clerical amendment.

SECTION 113. EFFECT OF JUDGMENT ON TAX LIEN AND LEVY

(*a*) *Lien not merged in judgment*

Section 113(a) of the bill amends section 6322 of the code (relating to period of lien). Section 6322 presently provides that unless another date is specifically fixed by law, the lien imposed by section 6321 (relating to lien for taxes) shall arise at the time the assessment is made and shall continue until the liability for the amount so assessed is satisfied or becomes unenforcible by reason of lapse of time. Section 6322 as amended provides that the lien imposed by section 6321 shall, in the case where a judgment for an assessed tax liability is secured by the United States against the person liable therefor, continue until such judgment is satisfied or becomes unenforcible by reason of lapse of time.

Thus, if the United States secures a judgment against the taxpayer arising out of an assessed tax liability, the tax lien is not merged in the judgment and is independently enforcible until the judgment has been satisfied or becomes unenforcible by reason of lapse of time. The amendment made by section 113(a) of the bill is applicable only with respect to such judgments which have become final after the date of enactment of the bill. However, no inference should be drawn from this amendment, or its effective date, as to the treatment under existing law of the effect of a judgment on a tax lien.

(*b*) *Levy*

Section 113(b) of the bill amends section 6502(a) of the code (relating to length of period of collection after assessment). Section 6502(a) presently provides, in part, that an assessed tax liability may be collected by levy, but only if the levy is made within 6 years after the assessment of the tax (unless such period is extended or suspended in accordance with law). Section 6502(a) as amended provides that such period shall not be extended or curtailed by reason of a judgment against the taxpayer. Thus, a personal judgment rendered against a taxpayer arising out of an unpaid assessed tax liability does not extend the period during which such liability may be collected by levy. Similarly, the period during which such liability may be collected by levy is not curtailed by the fact that the United States secured such a judgment. For example, if the United States secures a personal judgment arising out of a tax liability assessed 4 years earlier, such liability may be collected by levy during the remaining 2 years of the 6-year statutory period.

SECTION 114. EFFECTIVE DATE

(*a*) *General rule.*

Section 114(a) of the bill provides that, except as otherwise provided, the amendments made by title I of the bill shall apply after the date of enactment of the bill, regardless of when a lien or a title of the United States arose or when the lien or interest of any other person was acquired.

(*b*) *Exceptions*

Section 114(b) of the bill provides that the amendments made by title I of the bill shall not apply: (1) in any case in which a Federal tax lien, or a title derived from the enforcement of a Federal tax lien, has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before the date of enactment of the bill; or (2) in any case in which the amendments made by title I of the bill would (*a*) impair a priority enjoyed by any person (other than the United States) holding a lien or interest prior to the date of enactment of the bill; (*b*) operate to increase the liability of any such person; or (*c*) shorten the time for bringing suit with respect to transactions occurring before the date of enactment of the bill.

(*c*) *Liability for withheld taxes*

Paragraph (1) of section 114(c) of the bill provides that the amendments made by section 105(a) of the bill (relating to effect on third parties) shall apply only with respect to wages paid on or after January 1, 1967.

Paragraph (2) of section 114(c) of the bill provides that the amendments made by section 105(b) of the bill (relating to performance bonds of contractors for public buildings and works) shall apply to contracts entered into pursuant to invitations for bids issued after June 30, 1967.

(*d*) *Civil action to clear title to property*

Section 114(d) of the bill provides that if, before the date of enactment of the bill, any person has commenced a civil action to clear title to property pursuant to existing section 7424 of the code (relating to civil action to clear title to property) as in effect immediately before the enactment of the bill, such action shall be determined in accordance with the provisions of such section.

Title II—Consent of United States To Be Sued in Actions Affecting Property in Which It Has a Lien or Interest

SECTION 201. JOINDER OF UNITED STATES IN CERTAIN PROCEEDINGS

Section 201 of the bill amends section 2410 of title 28 of the United States Code (relating to actions affecting property on which United States has lien) by redesignating present subsection (d) of section 2410 as subsection (e), and by striking out present subsections (a), (b), and (c) of section 2410 and inserting in lieu thereof new subsections (a), (b), (c), and (d). New subsections (a), (b), and (c) are revisions of the similarly designated provisions of present law. New subsection (d) provides a uniform method for determining the amount to be paid by the United States when it redeems real property.

Present section 2410(a) permits the joinder of the United States only in suits to quiet title to, or to foreclose a mortgage or other lien upon, real or personal property on which the United States has or claims a mortgage or other lien. New subsection (a) expands the permitted joinder of the United States to include suits to partition,

to condemn, or of interpleader or in the nature of interpleader with respect to, real or personal property on which the United States has or claims a mortgage or other lien. In all other respects, section 2410(a) is identical to existing law.

Present section 2410(b) sets forth the matters required to be alleged in a complaint in a suit in which the United States is joined, the procedures for the service of process on the United States in such suits, and the time available to the United States to file an answer or other pleading in such suits. New subsection (b) makes two changes in present law. The first change adds the words "or pleading" to the first sentence of new subsection (b). This change makes clear that any pleading (whether or not designated as a complaint) which seeks to join the United States under the provisions of section 2410 must set forth with particularity the nature of the interest or lien of the United States. The second change adds a new sentence specifying the elements of the particularity necessary in such complaint or pleading in suits involving liens arising under the Internal Revenue Code. The new sentence provides that in actions or suits involving liens arising under the internal revenue laws, the complaint or pleading shall include (1) the name and address of the taxpayer whose liability created the lien, (2) if a notice of the tax lien was filed, the identity of the internal revenue office which filed the notice, and (3) the date and place such notice of lien was filed. These requirements must be met with respect to each filed notice of tax lien.

Subsection (c) of present section 2410 provides, in part, that a judicial sale in a quiet title or mortgage or lien foreclosure action in which the United States has been joined shall have the same effect respecting the discharge of the property from liens and encumbrances of the United States as may be provided with respect to such matters by the local law of the place where the property is situated. New subsection (c) provides that a judgment or decree in any action in which the United States has consented to be joined under section 2410 shall have the same effect respecting the discharge of the property from the mortgage or other lien held by the United States as may be provided with respect to such matters by the local law of the place where the court is situated. However, a new second sentence provides that an action to foreclose a mortgage or other lien in which the United States is joined under section 2410 must seek a judicial sale of the property sought to be discharged from the mortgage or other lien of the United States. Thus, in a mortgage or lien foreclosure action, the property involved will be discharged from a junior Federal mortgage or lien only if a judicial sale of the property is sought.

Subsection (c) of present section 2410 also provides that the United States shall have the right, for 1 year from the date of sale, to redeem real property when a sale of the property is made to satisfy a lien prior to that of the United States in an action in which the United States has been joined under section 2410.

Consistent with the new procedures contained in sections 7424 (relating to intervention by the United States) and 7425 (relating to discharge of liens held by the United States) of the Internal Revenue

Code (as added by secs. 108 and 109 of the bill), new subsection (c) of section 2410 reduces the period allowable for redemption from 1 year to 120 days or, if greater, to the period allowable under applicable State law, in cases where the lien discharged is a lien arising under the Internal Revenue Code. In addition, new subsection (c) provides that in any case in which, under the provisions of section 505 of the Housing Act of 1950, as amended (12 U.S.C. 1701k), and subsection (d) of section 1820 of title 38 of the United States Code, the right to redeem does not arise, there shall be no right of redemption. These exceptions exist under present law. Subsection (c) of section 2410 presently provides that only the head of the appropriate department or agency of the United States may authorize a bid to be made on behalf of the United States at a sale of property on which the United States holds a first lien. Subsection (c) of section 2410 as amended permits this authority to be delegated.

New subsection (d) of section 2410 contains new uniform rules for determining the amount the United States must pay in any case in which it exercises its right to redeem real property. The rules of new subsection (d) are applicable to all redemptions of real property made by the United States under the authority of subsection (c) of section 2410 or section 7425(d)(1) of the Internal Revenue Code (as added by section 109 of the bill). The amount to be paid by the United States is the sum of three constituent elements.

Paragraph (1) of section 2410(d) contains the rule for determining the first element of the amount to be paid by the United States. Paragraph (1) provides that the United States shall pay the actual amount paid at the foreclosure sale by the purchaser of the real property being redeemed (which in the case of a purchaser who is the holder of the lien being foreclosed shall include the amount of the obligation secured by such lien to the extent satisfied by reason of such sale).

Paragraph (2) of section 2410(d) contains the rule for determining the second element of the amount to be paid by the United States. Paragraph (2) provides that the United States shall pay interest on the amount paid by the purchaser at the foreclosure sale (as determined in accordance with sec. 2410(d)(1)) at 6 percent per annum for the period from the date of the foreclosure sale to the date of the redemption.

Paragraph (3) of section 2410(d) contains the rule for determining the third element of the amount to be paid by the United States. Paragraph (3) provides that the United States shall pay the amount (if any) equal to the excess of (A) the expenses necessarily incurred in connection with such property by the purchaser at the foreclosure sale, over (B) the income from such property realized by such purchaser plus a reasonable rental value of such property (to the extent such property is used by the purchaser).

SECTION 202. JURISDICTION AND VENUE IN CERTAIN ACTIONS AGAINST THE UNITED STATES

(*a*) *Jurisdiction in proceedings brought by third parties*

Section 202(a) of the bill amends section 1346 of title 28 of the United States Code (relating to jurisdiction of suits against the United States) by adding after section 1346(d) a new subsection (e). New subsection (e) provides that the United States district courts shall have original jurisdiction of any civil action against the United States provided for in new section 7426 of the code (relating to civil actions by persons other than taxpayers, as added by sec. 110(a) of the bill).

(*b*) *Venue in proceedings brought by third parties*

Section 202(b) of the bill amends section 1402 of title 28 of the United States Code (relating to venue in suits against the United States) by adding after section 1402(b) a new subsection (c). New subsection (c) provides that any civil action against the United States under section 1346(e) of title 28 of the United States Code (as added by sec. 202(a) of the bill) may be prosecuted only in the judicial district where the property is situated at the time of levy, or if no levy is made, in the judicial district in which the event occurred which gave rise to the cause of action. For example, a person authorized to bring an action against the United States under section 7426(a)(1) of the code (as added by sec. 110(a) of the bill) who claims an interest in or lien on property upon which the United States has levied may bring such action only in the judicial district where such property is situated at the time of the levy.

SECTION 203. EFFECTIVE DATE

Section 203 of the bill provides that the amendments made by title II of the bill shall apply after the date of enactment of the bill.

IV. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1954

* * * * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

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Subchapter G—Corporations Used to Avoid Income Tax on Shareholders

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SEC. 545. UNDISTRIBUTED PERSONAL HOLDING COMPANY INCOME.

(a) DEFINITION.—For purposes of this part, the term "undistributed personal holding company income" means the taxable income of a personal holding company adjusted in the manner provided in subsections (b) and (c), minus the dividends paid deduction as defined in section 561.

(b) ADJUSTMENTS TO TAXABLE INCOME.—For the purposes of subsection (a), the taxable income shall be adjusted as follows:

* * * * * * *

(9) AMOUNT OF A LIEN IN FAVOR OF THE UNITED STATES.—There shall be allowed as a deduction the amount, not to exceed the taxable income of the taxpayer, of any lien in favor of the United States (notice of which has been filed as provided in [section 6323 (a) (1), (2), or (3))] *section 6323(f)*) to which the taxpayer is subject at the close of the taxable year. The sum of the amounts deducted under this paragraph with respect to any lien shall, for the purposes of this section, be added to the taxable income of the taxpayer for the taxable year in which such lien is satisfied or released. Where an amount is added to the taxable income of a corporation by reason of the preceding sentence of this paragraph, the shareholders of the corporation may, pursuant to regulations prescribed by the Secretary or his delegate, elect to compute the income tax with respect to such dividends as are attributable to such amount as though they were received ratably over the period the lien was in effect.

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CHAPTER 25—GENERAL PROVISIONS RELATING TO EMPLOYMENT TAXES

Sec. 3501. Collection and payment of taxes.
Sec. 3502. Nondeductibility of taxes in computing taxable income.
Sec. 3503. Erroneous payments.
Sec. 3504. Acts to be performed by agents.
Sec. 3505. Liability of third parties paying or providing for wages.

SEC. 3501. COLLECTION AND PAYMENT OF TAXES.

The taxes imposed by this subtitle shall be collected by the Secretary or his delegate and shall be paid into the Treasury of the United States as internal-revenue collections.

SEC. 3502. NONDEDUCTIBILITY OF TAXES IN COMPUTING TAXABLE INCOME.

(a) The taxes imposed by section 3101 of chapter 21, and by sections 3201 and 3211 of chapter 22 shall not be allowed as a deduction to the taxpayer in computing taxable income under subtitle A.

(b) The tax deducted and withheld under chapter 24 shall not be allowed as a deduction either to the employer or to the recipient of the income in computing taxable income under subtitle A.

SEC. 3503. ERRONEOUS PAYMENTS.

Any tax paid under chapter 21 or 22 by a taxpayer with respect to any period with respect to which he is not liable to tax under such chapter shall be credited against the tax, if any, imposed by such other chapter upon the taxpayer, and the balance, if any, shall be refunded.

SEC. 3504. ACTS TO BE PERFORMED BY AGENTS.

In case a fiduciary, agent, or other person has the control, receipt, custody, or disposal of, or pays the wages of an employee or group of employees, employed by one or more employers, the Secretary or his delegate, under regulations prescribed by him, is authorized to designate such fiduciary, agent, or other person to perform such acts as are required of employers under this title and as the Secretary or his delegate may specify. Except as may be otherwise prescribed by the Secretary or his delegate, all provisions of law (including penalties) applicable in respect of an employer shall be applicable to a fiduciary, agent, or other person so designated but, except as so provided, the employer for whom such fiduciary, agent, or other person acts shall remain subject to the provisions of law (including penalties) applicable in respect of employers.

SEC. 3505. LIABILITY OF THIRD PARTIES PAYING OR PROVIDING FOR WAGES.

(a) Direct Payment by Third Parties.—For purposes of sections 3102, 3202, 3402, and 3403, if a lender, surety, or other person, who is not an employer under such sections with respect to an employee or group of employees, pays wages directly to such an employee or group of employees, employed by one or more employers, or to an agent on behalf of such employee or employees, such lender, surety, or other person shall

be liable in his own person and estate to the United States in a sum equal to the taxes (together with interest) required to be deducted and withheld from such wages by such employer.

(b) Personal Liability Where Funds Are Supplied.—If a lender, surety, or other person supplies funds to or for the account of an employer for the specific purpose of paying wages of the employees of such employer, with actual notice or knowledge (within the meaning of section 6323(i)(1)) that such employer does not intend to or will not be able to make timely payment or deposit of the amounts of tax required by this subtitle to be deducted and withheld by such employer from such wages, such lender, surety, or other person shall be liable in his own person and estate to the United States in a sum equal to the taxes (together with interest) which are not paid over to the United States by such employer with respect to such wages. However, the liability of such lender, surety, or other person shall be limited to an amount equal to 25 percent of the amount so supplied to or for the account of such employer for such purpose.

(c) Effect of Payment.—Any amounts paid to the United States pursuant to this section shall be credited against the liability of the employer.

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CHAPTER 64—COLLECTION

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Subchapter C—Lien for Taxes

Sec. 6321. Lien for taxes.
Sec. 6322. Period of lien.
[Sec. 6323. Validity against mortgagees, pledgees, purchasers, and judgment creditors.]
Sec. 6323. Validity and priority against certain persons.
Sec. 6324. Special liens for estate and gift taxes.
Sec. 6325. Release of lien or [partial] discharge of property.
Sec. 6326. Cross references.

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SEC. 6322. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien imposed by section 6321 shall arise at the time the assessment is made and shall continue until the liability for the amount so assessed (*or a judgment against the taxpayer arising out of such liability*) is satisfied or becomes unenforceable by reason of lapse of time.

[SEC. 6323. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

[(a) Invalidity of Lien Without Notice.—Except as otherwise provided in subsections (c) and (d), the lien imposed by section 6321 shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the Secretary or his delegate—

[(1) Under state or territorial laws.—In the office designated by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law designated an office within the State or Territory for the filing of such notice; or

[(2) WITH CLERK OF DISTRICT COURT.—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law designated an office within the State or Territory for the filing of such notice; or

[(3) WITH CLERK OF DISTRICT COURT FOR DISTRICT OF COLUMBIA.—In the office of the clerk of the United States District Court for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

[(b) FORM OF NOTICE.—If the notice filed pursuant to subsection (a)(1) is in such form as would be valid if filed with the clerk of the United States district court pursuant to subsection (a)(2), such notice shall be valid notwithstanding any law of the State or Territory regarding the form or content of a notice of lien.

[(c) EXCEPTION IN CASE OF SECURITIES.—

[(1) EXCEPTION.—Even though notice of a lien provided in section 6321 has been filed in the manner prescribed in subsection (a) of this section, the lien shall not be valid with respect to a security, as defined in paragraph (2) of this subsection, as against any mortgagee, pledgee, or purchaser of such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien.

[(2) DEFINITION OF SECURITY.—As used in this subsection, the term "security" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

[(d) EXCEPTION IN CASE OF MOTOR VEHICLES.—

[(1) EXCEPTION.—Even though notice of a lien provided in section 6321 has been filed in the manner prescribed in subsection (a) of this section, the lien shall not be valid with respect to a motor vehicle, as defined in paragraph (2) of this subsection, as against any purchaser of such motor vehicle for an adequate and full consideration in money or money's worth if—

[(A) at the time of the purchase the purchaser is without notice or knowledge of the existence of such lien, and

[(B) before the purchaser obtains such notice or knowledge, he has acquired possession of such motor vehicle and has not thereafter relinquished possession of such motor vehicle to the seller or his agent.

[(2) DEFINITION OF MOTOR VEHICLE.—As used in this subsection, the term "motor vehicle" means a self-propelled vehicle which is registered for highway use under the laws of any State or foreign country.

[(e) DISCLOSURE OF AMOUNT OF OUTSTANDING LIEN.—If a notice of lien has been filed under subsection (a), the Secretary or his delegate is authorized to provide by rules or regulations the extent to

which, and the conditions under which, information as to the amount of the outstanding obligation secured by the lien may be disclosed.]

SEC. 6323. VALIDITY AND PRIORITY AGAINST CERTAIN PERSONS.

(a) Purchasers, Holders of Security Interests, Mechanic's Lienors, and Judgment Lien Creditors.—The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary or his delegate.

(b) Protection for Certain Interests Even Though Notice Filed.—Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid—

(1) Securities.—With respect to a security (as defined in subsection (h)(4))—

(A) as against a purchaser of such security who at the time of purchase did not have actual notice or knowledge of the existence of such lien; and

(B) as against a holder of a security interest in such security who, at the time such interest came into existence, did not have actual notice or knowledge of the existence of such lien.

(2) Motor vehicles.—With respect to a motor vehicle (as defined in subsection (h)(3)), as against a purchaser of such motor vehicle, if—

(A) at the time of the purchase such purchaser did not have actual notice or knowledge of the existence of such lien, and

(B) before the purchaser obtains such notice or knowledge, he has acquired possession of such motor vehicle and has not thereafter relinquished possession of such motor vehicle to the seller or his agent.

(3) Personal property purchased at retail.—With respect to tangible personal property purchased at retail, as against a purchaser in the ordinary course of the seller's trade or business, unless at the time of such purchase such purchaser intends such purchase to (or knows such purchase will) hinder, evade, or defeat the collection of any tax under this title.

(4) Personal property purchased in casual sale.—With respect to household goods, personal effects, or other tangible personal property described in section 6334(a) purchased (not for resale) in a casual sale for less than $250, as against the purchaser, but only if such purchaser does not have actual notice or knowledge (A) of the existence of such lien, or (B) that this sale is one of a series of sales.

(5) Personal property subject to possessory lien.—With respect to tangible personal property subject to a lien under local law securing the reasonable price of the repair or improvement of such property, as against a holder of such a lien, if such holder is, and has been, continuously in possession of such property from the time such lien arose.

(6) Real property tax and special assessment liens.—With respect to real property, as against a holder of a lien upon such property, if such lien is entitled under local law to priority over security interests in such property which are prior in time, and such lien secures payment of—

(A) a tax of general application levied by any taxing authority based upon the value of such property;

(B) a special assessment imposed directly upon such property by any taxing authority, if such assessment is imposed for the purpose of defraying the cost of any public improvement; or

(C) charges for utilities or public services furnished to such property by the United States, a State or political subdivision thereof, or an instrumentality of any one or more of the foregoing.

(7) Residential property subject to a mechanic's lien for certain repairs and improvements.—With respect to real property subject to a lien for repair or improvement of a personal residence (containing not more than four dwelling units) occupied by the owner of such residence, as against a mechanic's lienor, but only if the contract price on the contract with the owner is not more than $1,000.

(8) Attorneys' liens.—With respect to a judgment or other amount in settlement of a claim or of a cause of action, as against an attorney who, under local law, holds a lien upon or a contract enforceable against such judgment or amount, to the extent of his reasonable compensation for obtaining such judgment or procuring such settlement, except that this paragraph shall not apply to any judgment or amount in settlement of a claim or of a cause of action against the United States to the extent that the United States offsets such judgment or amount against any liability of the taxpayer to the United States.

(9) Certain insurance contracts.—With respect to a life insurance, endowment, or annuity contract, as against the organization which is the insurer under such contract, at any time—

(A) before such organization had actual notice or knowledge of the existence of such lien;

(B) after such organization had such notice or knowledge, with respect to advances required to be made automatically to maintain such contract in force under an agreement entered into before such organization had such notice or knowledge; or

(C) after satisfaction of a levy pursuant to section 6332(b), unless and until the Secretary or his delegate delivers to such organization a notice, executed after the date of such satisfaction, of the existence of such lien.

(10) Passbook loans.—With respect to a savings deposit, share, or other account, evidenced by a passbook, with an institution described in section 581 or 591, to the extent of any loan made by such institution without actual notice or knowledge of the existence of such lien, as against such institution, if such loan is secured by such account and if such institution has been continuously in possession of such passbook from the time the loan is made.

(c) Protection for Certain Commercial Transactions Financing Agreements, etc.—

(1) In general.—To the extent provided in this subsection, even through notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing but which—

(A) is in qualified property covered by the terms of a written agreement entered into before tax lien filing and constituting—

(i) a commercial transactions financing agreement,

(ii) a real property construction or improvement financing agreement, or

(iii) an obligatory disbursement agreement, and

(B) is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

(2) Commercial transactions financing agreement.—For purposes of this subsection—

(A) Definition.—The term "commercial transactions financing agreement" means an agreement (entered into by a person in the course of his trade or business)—

(i) to make loans to the taxpayer to be secured by commercial financing security acquired by the taxpayer in the ordinary course of his trade or business, or

(ii) to purchase commercial financing security (other than inventory) acquired by the taxpayer in the ordinary course of his trade or business;

but such an agreement shall be treated as coming within the term only to the extent that such loan or purchase is made before the 46th day after the date of tax lien filing or (if earlier) before the lender or purchaser had actual notice or knowledge of such tax lien filing.

(B) Limitation on qualified property.—The term "qualified property", when used with respect to a commercial transactions financing agreement, includes only commercial financing security acquired by the taxpayer before the 46th day after the date of tax lien filing.

(C) Commercial financing security defined.—The term "commercial financing security" means (i) paper of a kind ordinarily arising in commercial transactions, (ii) accounts receivable, (iii) mortgages on real property, and (iv) inventory.

(D) Purchaser treated as acquiring security interest.—A person who satisfies subparagraph (A) by reason of clause (ii) thereof shall be treated as having acquired a security interest in commercial financing security.

(3) Real property construction or improvement financing agreement.—For purposes of this subsection—

(A) Definition.—The term "real property construction or improvement financing agreement" means an agreement to make cash disbursements to finance—

(i) the construction or improvement of real property,

(ii) a contract to construct or improve real property, or

(iii) the raising or harvesting of a farm crop or the raising of livestock or other animals.

For purposes of clause (iii), the furnishing of goods and services shall be treated as the disbursement of cash.

(B) Limitation on qualified property.—The term "qualified property", when used with respect to a real property construction or improvement financing agreement, includes only—

(i) in the case of subparagraph (A)(i), the real property with respect to which the construction or improvement has been or is to be made,

(ii) in the case of subparagraph (A)(ii), the proceeds of the contract described therein, and

(iii) in the case of subparagraph (A)(iii), property subject to the lien imposed by section 6321 at the time of

tax lien filing and the crop or the livestock or other animals referred to in subparagraph (A)(iii).

(4) Obligatory disbursement agreement.—For purposes of this subsection—

(A) Definition.—The term "obligatory disbursement agreement" means an agreement (entered into by a person in the course of his trade or business) to make disbursements, but such an agreement shall be treated as coming within the term only to the extent of disbursements which are required to be made by reason of the intervention of the rights of a person other than the taxpayer.

(B) Limitation on qualified property.—The term "qualified property", when used with respect to an obligatory disbursement agreement, means property subject to the lien imposed by section 6321 at the time of tax lien filing and (to the extent that the acquisition is directly traceable to the disbursements referred to in subparagraph (A)) property acquired by the taxpayer after tax lien filing.

(C) Special rules for surety agreements.—Where the obligatory disbursement agreement is an agreement ensuring the performance of a contract between the taxpayer and another person—

(i) the term "qualified property" shall be treated as also including the proceeds of the contract the performance of which was ensured, and

(ii) if the contract the performance of which was ensured was a contract to construct or improve real property, to produce goods, or to furnish services, the term "qualified property" shall be treated as also including any tangible personal property used by the taxpayer in the performance of such ensured contract.

(d) 45-Day Period For Making Disbursements.—Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing by reason of disbursements made before the 46th day after the date of tax lien filing, or (if earlier) before the person making such disbursements had actual notice or knowledge of tax lien filing, but only if such security interest—

(1) is in property (A) subject, at the time of tax lien filing, to the lien imposed by section 6321, and (B) covered by the terms of a written agreement entered into before tax lien filing, and

(2) is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

(e) Priority of Interest and Expenses.—If the lien imposed by section 6321 is not valid as against a lien or security interest, the priority of such lien or security interest shall extend to—

(1) any interest or carrying charges upon the obligation secured,

(2) the reasonable charges and expenses of an indenture trustee or agent holding the security interest for the benefit of the holder of the security interest,

(3) the reasonable expenses, including reasonable compensation for attorneys, actually incurred in collecting or enforcing the obligation secured,

(4) the reasonable costs of insuring, preserving, or repairing the property to which the lien or security interest relates,

(5) the reasonable costs of insuring payment of the obligation secured, and

(6) amounts paid to satisfy any lien on the property to which the lien or security interest relates, but only if the lien so satisfied is entitled to priority over the lien imposed by section 6321,

to the extent that, under local law, any such item has the same priority as the lien or security interest to which it relates.

(f) PLACE FOR FILING NOTICE; FORM.—The notice referred to in subsection (a) shall be filed—

(1) UNDER STATE LAWS.—In the office designated by the law of the State in which the property subject to the lien is situated, whenever the State has by law designated an office within the State for the filing of such notice; or

(2) WITH CLERK OF DISTRICT COURT.—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State has not by law designated an office within the State for the filing of such notice; or

(3) WITH RECORDER OF DEEDS OF THE DISTRICT OF COLUMBIA.—In the office of the Recorder of Deeds of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

If the notice filed pursuant to paragraph (1) is in such form as would be valid if filed with the clerk of the United States district court pursuant to paragraph (2), such notice shall be valid notwithstanding any law of the State regarding the form or content of a notice of lien.

(g) REFILING OF NOTICE.—

(1) IN GENERAL.—For purposes of this section, unless notice of lien is refiled (in the office in which the prior notice was filed) during the required refiling period, such notice of lien shall be treated as filed on the date on which it is filed (in accordance with subsection (f)) after the expiration of such refiling period.

(2) REQUIRED REFILING PERIOD.—In the case of any notice of lien, the term "required refiling period" means—

(A) the one-year period ending 30 days after the expiration of 6 years after the date of the assessment of the tax, and

(B) the one-year period ending with the expiration of 6 years after the close of the preceding required refiling period for such notice of lien.

(3) TRANSITIONAL RULE.—Notwithstanding paragraph (2), if the assessment of the tax was made before January 1, 1962, the first required refiling period shall be the calendar year 1967.

(h) DEFINITIONS.—For purposes of this section and section 6324—

(1) SECURITY INTEREST.—The term "security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time (A) if, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien arising out of an unsecured obligation, and (B) to the extent that, at such time, the holder has parted with money or money's worth.

(2) MECHANIC'S LIENOR.—The term "mechanic's lienor" means any person who under local law has a lien on real property (or on

the proceeds of a contract relating to real property) for services, labor, or materials furnished in connection with the construction or improvement of such property. For purposes of the preceding sentence, a person has a lien on the earliest date such lien becomes valid under local law against subsequent purchasers without actual notice, but not before he begins to furnish the services, labor, or materials.

(3) Motor vehicle.—The term "motor vehicle" means a self-propelled vehicle which is registered for highway use under the laws of any State or foreign country.

(4) Security.—The term "security" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by a corporation or a government or political subdivision thereof, with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(5) Tax lien filing.—The term "tax lien filing" means the filing of notice (referred to in subsection (a) of the lien imposed by section 6321.

(6) Purchaser.—The term "purchaser" means a person who, for adequate and full consideration in money or money's worth, acquires an interest (other than a lien or security interest) in property which is valid under local law against subsequent purchasers without actual notice. In applying the preceding sentence for purposes of subsection (a) of this section, and purpose of section 6324—

(A) a lease of property,

(B) a written executory contract to purchase or lease property,

(C) an option to purchase or lease property or any interest therein, or

(D) an option to renew or extend a lease of property,

which is not a lien or security interest shall be treated as an interest in property.

(i) Special Rules.—

(1) Actual notice or knowledge.—For purposes of this subchapter, an organization shall be deemed for purposes of a particular transaction to have actual notice or knowledge of any fact from the time such fact is brought to the attention of the individual conducting such transaction, and in any event from the time such fact would have been brought to such individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(2) Subrogation.—Where, under local law, one person is subrogated to the rights of another with respect to a lien or interest, such person shall be subrogated to such rights for purposes of any lien imposed by section 6321 or 6324.

(3) Disclosure of amount of outstanding lien.—If a notice of lien has been filed pursuant to subsection (f), the Secretary or his delegate is authorized to provide by regulations the extent to which, and the conditions under which, information as to the amount of the outstanding obligation secured by the lien may be disclosed.

SEC. 6324. SPECIAL LIENS FOR ESTATE AND GIFT TAXES.

(a) Liens for Estate Tax.—Except as otherwise provided in subsection (c)—

(1) Upon gross estate.—Unless the estate tax imposed by chapter 11 is sooner paid in full, *or becomes unenforceable by reason of lapse of time,* it shall be a lien [for 10 years] upon the gross estate of the decedent *for 10 years from the date of death,* except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien.

(2) Liability of transferees and others.—If the estate tax imposed by chapter 11 is not paid when due, then the spouse, transferee, trustee (except the trustee of an employee's trust which meets the requirements of section 401(a)), surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042, inclusive, to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax. Any part of such property transferred by (or transferred by a transferee of)) such spouse, transferee, trustee, surviving tenant, person in possession [of property by reason of the exercise, nonexercise, or release of a power of appointment], or beneficiary, to a [bona fide purchaser, mortgagee, or pledgee, for an adequate and full consideration in money or money's worth] *purchaser or holder of a security interest* shall be divested of the lien provided in paragraph (1) and a like lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, *or* beneficiary, or transferee of any such person, except any part transferred to a [bona fide purchaser, mortgagee, or pledgee, for an adequate and full consideration in money or money's worth] *purchaser or a holder of a security interest.*

(3) Continuance after discharge of executor.—The provisions of section 2204 (relating to discharge of executor from personal liability) shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless such part of the gross estate (or any interest therein) has been transferred to a [bona fide purchaser, mortgagee, or pledgee, for an adequate and full consideration in money or money's worth] *purchaser or a holder of a security interest,* in which case such part (or such interest) shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such [purchaser, mortgagee, or pledgee] *purchaser or holder of a security interest,* by the heirs, legatees, devisees, or distributees.

(b) Lien for Gift Tax.—Except as otherwise provided in subsection (c), [(relating to transfers of securities) and subsection (d) (relating to purchases of motor vehicles), the gift tax imposed by chapter 12 shall be a lien upon all gifts made during the calendar year, for 10 years from the time the gifts are made.] *unless the gift tax imposed by chapter 12 is sooner paid in full or becomes unenforceable by reason of lapse of time, such tax shall be a lien upon all gifts made during the calendar year, for 10 years from the date the gifts are made.* If the tax is not paid when due, the donee of any gift shall be personally liable for such tax to the extent of the value of such gift. Any part of the property comprised in the gift transferred by the donee (or by a transferee of the donee) to a [bona fide purchaser, mortgagee, or pledgee, for an adequate and full consideration in money or money's worth] *purchaser or holder of a security interest* shall be divested of the lien imposed by this subsection and such lien, to the extent of the value of such gift, shall attach to all the property (including after-acquired property) of the donee (or the transferee) except any part transferred to a [bona fide purchaser, mortgagee, or pledgee, for an adequate and full consideration in money or money's worth] *purchaser or holder of a security interest.*

[(c) Exception in Case of Securities.—The lien imposed by subsection (a) or (b) shall not be valid with respect to a security, as defined in section 6323(c)(2), as against any mortgagee, pledgee, or purchaser of any such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien.

[(d) Exception in Case of Motor Vehicles.—The lien imposed by subsection (a) or (b) shall not be valid with respect to a motor vehicle, as defined in section 6323(d)(2), as against any purchaser of such motor vehicle for an adequate and full consideration in money or money's worth if—

[(1) at the time of the purchase the purchaser is without notice or knowledge of the existence of such lien, and

[(2) before the purchaser obtains such notice or knowledge, he has acquired possession of such motor vehicle and has not thereafter relinquished possession of such motor vehicle to the seller or his agent.]

(c) Exceptions.—

(1) The lien imposed by subsection (a) or (b) shall not be valid as against a mechanic's lienor and, subject to the conditions provided by section 6323(b) (relating to protection for certain interests even though notice filed), shall not be valid with respect to any lien or interest described in section 6323(b).

(2) If a lien imposed by subsection (a) or (b) is not valid as against a lien or security interest, the priority of such lien or security interest shall extend to any item described in section 6323(e) (relating to priority of interest and expenses) to the extent that, under local law, such item has the same priority as the lien or security interest to which it relates.

SEC. 6325. RELEASE OF LIEN OR [PARTIAL] DISCHARGE OF PROPERTY.

(a) Release of Lien.—Subject to such [rules or] regulations as the Secretary or his delegate may prescribe, the Secretary or his dele-

gate may issue a certificate of release of any lien imposed with respect to any internal revenue tax if—

(1) LIABILITY SATISFIED OR UNENFORCEABLE.—The Secretary or his delegate finds that the liability for the amount assessed, together with all interest in respect thereof, has been fully satisfied or has become legally unenforceable; or

(2) BOND ACCEPTED.—There is furnished to the Secretary or his delegate and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified by such [rules or] regulations.

(b) [PARTIAL] DISCHARGE OF PROPERTY.—

(1) PROPERTY DOUBLE THE AMOUNT OF THE LIABILITY.—Subject to such [rules or] regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to any lien imposed under this chapter if the Secretary or his delegate finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the unsatisfied liability secured by such lien and the amount of all other liens upon such property which have priority [to] *over* such lien.

(2) PART PAYMENT [OR]*;* INTEREST OF UNITED STATES VALUELESS.—Subject to such [rules or] regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to the lien if—

(A) there is paid over to the Secretary or his delegate in part satisfaction of the liability secured by the lien an amount determined by the Secretary or his delegate, which shall not be less than the value, as determined by the Secretary or his delegate, of the interest of the United States in the part to be so discharged, or

(B) the Secretary or his delegate determines at any time that the interest of the United States in the part to be so discharged has no value.

In determining the value of the interest of the United States in the part to be so discharged, the Secretary or his delegate shall give consideration to the [fair market] value of such part and to such liens thereon as have priority [to] *over* the lien of the United States.

(3) SUBSTITUTION OF PROCEEDS OF SALE.—Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to the lien if such part of the property is sold and, pursuant to an agreement with the Secretary or his delegate, the proceeds of such sale are to be held, as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as such liens and claims had with respect to the discharged property.

(c) ESTATE OR GIFT TAX.—Subject to such [rules or] regulations as the Secretary or his delegate may prescribe, the Secretary or his

delegate may issue a certificate of discharge of any or all of the property subject to any lien imposed by section 6324 if the Secretary or his delegate finds that the liability secured by such lien has been fully satisfied or provided for.

(d) Subordination of Lien.—Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of subordination of any lien imposed by this chapter upon any part of the property subject to such lien if—

(1) there is paid over to the Secretary or his delegate an amount equal to the amount of the lien or interest to which the certificate subordinates the lien of the United States, or

(2) the Secretary or his delegate believes that the amount realizable by the United States from the property to which the certificate relates, or from any other property subject to the lien, will ultimately be increased by reason of the issuance of such certificate and that the ultimate collection of the tax liability will be facilitated by such subordination.

(e) Nonattachment of Lien.—If the Secretary or his delegate determines that, because of confusion of names or otherwise, any person (other than the person against whom the tax was assessed) is or may be injured by the appearance that a notice of lien filed under section 6323 refers to such person, the Secretary or his delegate may issue a certificate that the lien does not attach to the property of such person.

[(d) Effect of Certificate of Release or Discharge.—A certificate of release or of discharge issued under this section shall be held conclusive that the lien upon the property covered by the certificate is extinguished.]

(f) Effect of Certificate.—

(1) Conclusiveness.—Except as provided in paragraphs (2) and (3), if a certificate is issued pursuant to this section by the Secretary or his delegate and is filed in the same office as the notice of lien to which it relates (if such notice of lien has been filed) such certificate shall have the following effect:

(A) in the case of a certificate of release, such certificate shall be conclusive that the lien referred to in such certificate is extinguished;

(B) in the case of a certificate of discharge, such certificate shall be conclusive that the property covered by such certificate is discharged from the lien;

(C) in the case of a certificate of subordination, such certificate shall be conclusive that the lien or interest to which the lien of the United States is subordinated is superior to the lien of the United States; and

(D) in the case of a certificate of nonattachment, such certificate shall be conclusive that the lien of the United States does not attach to the property of the person referred to in such certificate.

(2) Revocation of certificate of release or nonattachment.—If the Secretary or his delegate determines that a certificate of release or nonattachment of alien imposed by section 6321 was issued erroneously or improvidently, or if a certificate of release of such lien was issued pursuant to a collateral agreement entered into in connection with a compromise under section 7122 which has been breached, and if the period of limitation on collection after assess-

ment has not expired, the Secretary or his delegate may revoke such certificate and reinstate the lien—

(A) by mailing notice of such revocation to the person against whom the tax was assessed at his last known address, and

(B) by filing notice of such revocation in the same office in which the notice of lien to which it relates was filed (if such notice of lien had been filed).

Such reinstated lien (i) shall be effective on the date notice of revocation is mailed to the taxpayer in accordance with the provisions of subparagraph (A), but not earlier than the date on which any required filing of notice of revocation is filed in accordance with the provisions of subparagraph (B), and (ii) shall have the same force and effect (as of such date), until the expiration of the period of limitation on collection after assessment, as a lien imposed by section 6321 (relating to lien for taxes).

(3) CERTIFICATES VOID UNDER CERTAIN CONDITIONS.—Notwithstanding any other provision of this subtitle, any lien imposed by this chapter shall attach to any property with respect to which a certificate of discharge has been issued if the person liable for the tax reacquires such property after such certificate has been issued.

(g) FILING OF CERTIFICATES AND NOTICES.—If a certificate or notice issued pursuant to this section may not be filed in the office designated by State law in which the notice of lien imposed by section 6321 is filed, such certificate or notice shall be effective if filed in the office of the clerk of the United States district court for the judicial district in which such office is situated.

[(e)] *(h)* CROSS [REFERENCES] *REFERENCE.*—

[(1) For single bond complying with the requirements of both subsection (a)(2) and section 6165, see section 7102.

[(2) For other provisions relating to bonds, see generally chapter 73.

[(3) For provisions relating to suits to enforce lien, see section 7403.

[(4) For provisions relating to suits to clear title to realty, see section 7424.]

For provisions relating to bonds, see chapter 73 (sec. 7101 and following).

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Subchapter D—Seizure of Property for Collection of Taxes

Sec. 6331. Levy and distraint.
Sec. 6332. Surrender of property subject to levy.
Sec. 6333. Production of books.
Sec. 6334. Property exempt from levy.
Sec. 6335. Sale of seized property.
Sec. 6336. Sale of perishable goods.
Sec. 6337. Redemption of property.
Sec. 6338. Certificate of sale; deed of real property.
Sec. 6339. Legal effect of certificate of sale of personal property and deed of real property.
Sec. 6340. Records of sale.
Sec. 6341. Expense of levy and sale.
Sec. 6342. Application of proceeds of levy.
[Sec. 6343. Authority to release levy.]
Sec. 6343. Authority to release levy and return property.
Sec. 6344. Cross references.

SEC. 6331. LEVY AND DISTRAINT.

(a) AUTHORITY OF SECRETARY OR DELEGATE.—If any person liable to pay any tax neglects or refuses to pay the same within 10 days

after notice and demand, it shall be lawful for the Secretary or his delegate to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401 (d)) of such officer, employee, or elected official. If the Secretary or his delegate makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary or his delegate and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.

(b) SEIZURE AND SALE OF PROPERTY.—The term "levy" as used in this title includes the power of distraint and seizure by any means. *A levy shall extend only to property possessed and obligations existing at the time thereof.* In any case in which the Secretary or his delegate may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

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SEC. 6332. SURRENDER OF PROPERTY SUBJECT TO LEVY.

(a) REQUIREMENT.—[Any person] *Except as otherwise provided in subsection (b), any person* in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Secretary or his delegate, surrender such property or rights (or discharge such obligation) to the Secretary or his delegate, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process.

[(b) PENALTY FOR VIOLATION.—Any person who fails or refuses to surrender as required by subsection (a) any property or rights to property, subject to levy, upon demand by the Secretary or his delegate, shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes for the collection of which such levy has been made, together with costs and interest on such sum at the rate of 6 percent per annum from the date of such levy.]

(b) SPECIAL RULE FOR LIFE INSURANCE AND ENDOWMENT CONTRACTS.—

(1) IN GENERAL.—A levy on an organization with respect to a life insurance or endowment contract issued by such organization shall, without necessity for the surrender of the contract document, constitute a demand by the Secretary or his delegate for payment of the amount described in paragraph (2) and the exercise of the right of the person against whom the tax is assessed to the advance of such amount. Such organizations shall pay over such amount 90 days after service of notice of levy. Such notice shall include a certification by the Secretary or his delegate that a copy of such notice has been mailed to the person against whom the tax is assessed at his last known address.

(2) Satisfaction of levy.—Such levy shall be deemed to be satisfied if such organization pays over to the Secretary or his delegate the amount which the person against whom the tax is assessed could have had advanced to him by such organization on the date prescribed in paragraph (1) for the payment of such levy, increased by the amount of any advance (including contractual interest thereon) made to such person on or after the date such organization had actual notice or knowledge (within the meaning of section 6323(i)(1)) of the existence of the lien with respect to which such levy is made, other than an advance (including contractual interest thereon) made automatically to maintain such contract in force under an agreement entered into before such organization had such notice or knowledge.

(3) Enforcement proceedings.—The satisfaction of a levy under paragraph (2) shall be without prejudice to any civil action for the enforcement of any lien imposed by this title with respect to such contract.

(c) Enforcement of Levy.—

(1) Extent of personal liability.—Any person who fails or refuses to surrender any property or rights to property, subject to levy, upon demand by the Secretary or his delegate, shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of taxes for the collection of which such levy has been made, together with costs and interest on such sum at the rate of 6 percent per annum from the date of such levy. Any amount (other than costs) recovered under this paragraph shall be credited against the tax liability for the collection of which such levy was made.

(2) Penalty for violation.—In addition to the personal liability imposed by paragraph (1), if any person required to surrender property or rights to property fails or refuses to surrender such property or rights to property without reasonable cause, such person shall be liable for a penalty equal to 50 percent of the amount recoverable under paragraph (1). No part of such penalty shall be credited against the tax liability for the collection of which such levy was made.

(d) Effect of Honoring Levy.—Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the Secretary or his delegate, surrenders such property or rights to property (or discharges such obligation) to the Secretary or his delegate (or who pays a liability under subsection (c)(1)) shall be discharged from any obligation or liability to the delinquent taxpayer with respect to such property or rights to property arising from such surrender or payment. In the case of a levy which is satisfied pursuant to subsection (b), such organization shall also be discharged from any obligation or liability to any beneficiary arising from such surrender or payment.

[(c)**]** *(e)* Person Defined.—The term "person," as used in subsection (a), includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to surrender the property or rights to property, or to discharge the obligation.

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SEC. 6334. PROPERTY EXEMPT FROM LEVY.

(a) ENUMERATION.—There shall be exempt from levy—

(1) WEARING APPAREL AND SCHOOL BOOKS.—Such items of wearing apparel and such school books as are necessary for the taxpayer or for members of his family;

(2) FUEL, PROVISIONS, FURNITURE, AND PERSONAL EFFECTS.—If the taxpayer is the head of a family, so much of the fuel, provisions, furniture, and personal effects in his household, and of the arms for personal use, livestock, and poultry of the taxpayer, as does not exceed $500 in value;

(3) BOOKS AND TOOLS OF A TRADE, BUSINESS, OR PROFESSION.—So many of the books and tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate $250 in value.

(4) UNEMPLOYMENT BENEFITS.—Any amount payable to an individual with respect to his unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States, of any State [or Territory], or of the District of Columbia or of the Commonwealth of Puerto Rico.

(5) UNDELIVERED MAIL.—Mail, addressed to any person, which has not been delivered to the addressee.

(6) CERTAIN ANNUITY AND PENSION PAYMENTS.—Annuity or pension payments under the Railroad Retirement Act, benefits under the Railroad Unemployment Insurance Act, special pension payments received by a person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor roll (38 U.S.C. 562), and annuities based on retired or retainer pay under chapter 73 of title 10 of the United States Code.

(7) WORKMEN'S COMPENSATION.—Any amount payable to an individual as workmen's compensation (including any portion thereof payable with respect to dependents) under a workmen's compensation law of the United States, any State, the District of Columbia, or the Commonwealth of Puerto Rico.

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SEC. 6335. SALE OF SEIZED PROPERTY.

(a) NOTICE OF SEIZURE.—As soon as practicable after seizure of property, notice in writing shall be given by the Secretary or his delegate to the owner of the property (or, in the case of personal property, the possessor thereof), or shall be left at his usual place of abode or business if he has such within the internal revenue district where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such district, the notice may be mailed to his last known address. Such notice shall specify the sum demanded and shall contain, in the case of personal property, an account of the property seized and, in the case of real property, a description with reasonable certainty of the property seized.

(b) NOTICE OF SALE.—The Secretary or his delegate shall as soon as practicable after the seizure of the property give notice to the owner, in the [same manner as that] *manner* prescribed in subsection (a), and shall cause a notification to be published in some newspaper *published or generally circulated* within the county wherein such seizure is made, or, if there be no newspaper published *or generally*

circulated in such county, shall post such notice at the post office nearest the place where the seizure is made, and in not less than two other public places. Such notice shall specify the property to be sold, and the time, place, manner, and conditions of the sale thereof. Whenever levy is made without regard to the 10-day period provided in section 6331(a), public notice of sale of the property seized shall not be made within such 10-day period unless section 6336 (relating to sale of perishable goods) is applicable.

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SEC. 6337. REDEMPTION OF PROPERTY.

(a) Before Sale.—Any person whose property has been levied upon shall have the right to pay the amount due, together with the expenses of the proceeding, if any, to the Secretary or his delegate at any time prior to the sale thereof, and upon such payment the Secretary or his delegate shall restore such property to him, and all further proceedings in connection with the levy on such property shall cease from the time of such payment.

(b) Redemption of Real Estate After Sale.—

(1) Period.—The owners of any real property sold as provided in section 6335, their heirs, executors, or administrators, or any person having any interest therein, or a lien thereon, or any person in their behalf, shall be permitted to redeem the property sold, or any particular tract of such property, at any time within [1 year] *120 days* after the sale thereof.

(2) Price.—Such property or tract of property shall be permitted to be redeemed upon payment to the purchaser, or in case he cannot be found in the county in which the property to be redeemed is situated, then to the Secretary or his delegate, for the use of the purchaser, his heirs, or assigns, the amount paid by such purchaser and interest thereon at the rate of 20 percent per annum.

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SEC. 6338. CERTIFICATE OF SALE; DEED OF REAL PROPERTY.

(a) Certificate of Sale.—In the case of property sold as provided in section 6335, the Secretary or his delegate shall give to the purchaser a certificate of sale upon payment in full of the purchase price. In the case of real property, such certificate shall set forth the real property purchased, for whose taxes the same was sold, the name of the purchaser, and the price paid therefor.

(b) Deed to Real Property.—In the case of any real property sold as provided in section 6335 and not redeemed in the manner and within the time provided in section 6337, the Secretary or his delegate shall execute (in accordance with the laws of the State in which such real property is situated pertaining to sales of real property under execution) to the purchaser of such real property at such sale, upon his surrender of the certificate of sale, a deed of the real property so purchased by him, reciting the facts set forth in the certificate.

(c) Real Property Purchased by United States.—If real property is declared purchased by the United States at a sale pursuant to section 6335, the Secretary or his delegate shall at the proper time execute a deed [therefor after its preparation and the endorsement of approval as to its form by the United States attorney for the district

in which the property is situated, and the Secretary or his delegate shall, without delay, cause the] *therefor, and without delay cause such* deed to be duly recorded in the proper registry of deeds.

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SEC. 6339. LEGAL EFFECT OF CERTIFICATE OF SALE OF PERSONAL PROPERTY AND DEED OF REAL PROPERTY.

(a) CERTIFICATE OF SALE OF PROPERTY OTHER THAN REAL PROPERTY.—In all cases of sale pursuant to section 6335 of property (other than real property), the certificate of such sale—

(1) AS EVIDENCE.—Shall be prima facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale; and

(2) AS CONVEYANCES.—Shall transfer to the purchaser all right, title, and interest of the party delinquent in and to the property sold; and

(3) AS AUTHORITY FOR TRANSFER OF CORPORATE STOCK.—If such property consists of stocks, shall be notice, when received, to any corporation, company, or association of such transfer, and shall be authority to such corporation, company, or association to record the transfer on its books and records in the same manner as if the stocks were transferred or assigned by the party holding the same, in lieu of any original or prior certificate, which shall be void, whether canceled or not; and

(4) AS RECEIPTS.—If the subject of sale is securities or other evidences of debt, shall be a good and valid receipt to the person holding the same, as against any person holding or claiming to hold possession of such securities or other evidences of debt; and

(5) AS AUTHORITY FOR TRANSFER OF TITLE TO MOTOR VEHICLE.—If such property consists of a motor vehicle, shall be notice, when received, to any public official charged with the registration of title to motor vehicles, of such transfer and shall be authority to such official to record the transfer on his books and records in the same manner as if the certificate of title to such motor vehicle were transferred or assigned by the party holding the same, in lieu of any original or prior certificate, which shall be void, whether canceled or not.

(b) DEED OF REAL PROPERTY.—In the case of the sale of real property pursuant to section 6335—

(1) DEED AS EVIDENCE.—The deed of sale given pursuant to section 6338 shall be prima facie evidence of the facts therein stated; and

(2) DEED AS CONVEYANCE OF TITLE.—If the proceedings of the Secretary or his delegate as set forth have been substantially in accordance with the provisions of law, such deed shall be considered and operate as a conveyance of all the right, title, and interest the party deliquent had in and to the real property thus sold at the time the lien of the United States attached thereto.

(c) EFFECT OF JUNIOR ENCUMBRANCES.—A certificate of sale of personal property given or a deed to real property executed pursuant to section 6338 shall discharge such property from all liens, encumbrances, and titles over which the lien of the United States with respect to which the levy was made had priority.

(*d*) *Cross References.*—

(*1*) ***For distribution of surplus proceeds, see section 6342(b).***
(*2*) ***For judicial procedure with respect to surplus proceeds, see section 7426(a)(2).***

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SEC. 6342. APPLICATION OF PROCEEDS OF LEVY.

[(a) Collection of Liability.—Any money realized by proceedings under this subchapter (whether by seizure, by surrender under section 6332, or by sale of seized property) shall be applied as follows:]

(a) Collection of Liability.—Any money realized by proceedings under this subchapter (whether by seizure, by surrender under section 6332 (except pursuant to subsection (c)(2) thereof), or by sale of seized property) or by sale of property redeemed by the United States (if the interest of the United States in such property was a lien arising under the provisions of this title) shall be applied as follows:

(1) Expense of levy and sale.—First, against the expenses of the proceedings [under this subchapter];

(2) Specific tax liability on seized property.—If the property seized and sold is subject to a tax imposed by any internal revenue law which has not been paid, the amount remaining after applying paragraph (1) shall then be applied against such tax liability (and, if such tax was not previously assessed, it shall then be assessed);

(3) Liability of delinquent taxpayer.—The amount, if any, remaining after applying paragraphs (1) and (2) shall then be applied against the liability in respect of which the levy was made *or the sale was conducted.*

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SEC. 6343. AUTHORITY TO RELEASE LEVY *AND RETURN PROPERTY.*

[It shall be] (*a*) *Release of Levy.—It shall be* lawful for the Secretary or his delegate, under regulation prescribed by the Secretary or his delegate, to release the levy upon all or part of the property or rights to property levied upon where the Secretary or his delegate determines that such action will facilitate the collection of the liability, but such release shall not operate to prevent any subsequent levy.

(b) Return of Property.—If the Secretary or his delegate determines that property has been wrongfully levied upon, it shall be lawful for the Secretary or his delegate to return—

(1) the specific property levied upon,

(2) an amount of money equal to the amount of money levied upon, or

(3) an amount of money equal to the amount of money received by the United States from a sale of such property.

Property may be returned at any time. An amount equal to the amount of money levied upon or recieved from such sale may be returned at any time before the expiration of 9 months from the date of such levy. For purposes of paragraph (3), if property is declared purchased by the United States at a sale pursuant to section 6335(e) (relating to manner and conditions of sale), the United States shall be treated as having received an amount of money equal to the minimum price determined pursuant to such section or (if larger) the amount received by the United States from the resale of such property.

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CHAPTER 66—LIMITATIONS

SUBCHAPTER A. Limitations on assessment and collection.
SUBCHAPTER B. Limitations on credit or refund.
SUBCHAPTER C. Mitigation of effect of period of limitations.
SUBCHAPTER D. Periods of limitation in judicial proceedings.

Subchapter A—Limitations on Assessment and Collection

Sec. 6501. Limitations on assessment and collection.
Sec. 6502. Collection after assessment.
Sec. 6503. Suspension of running of period of limitation.
Sec. 6504. Cross references.

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SEC. 6502. COLLECTION AFTER ASSESSMENT.

(a) LENGTH OF PERIOD.—Where the assessment of any tax imposed by this title has been made within the period of limitation properly applicable thereto, such tax may be collected by levy or by a proceeding in court, but only if the levy is made or the proceeding begun—

(1) within 6 years after the assessment of the tax, or

(2) prior to the expiration of any period for collection agreed upon in writing by the Secretary or his delegate and the taxpayer before the expiration of such 6-year period (or, if there is a release of levy under section 6343 after such 6-year period, then before such release).

The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. *The period provided by this subsection during which a tax may be collected by levy shall not be extended or curtailed by reason of a judgment against the taxpayer.*

(b) DATE WHEN LEVY IS CONSIDERED MADE.—The date on which a levy on property or rights to property is made shall be the date on which the notice of seizure provided in section 6335(a) is given.

SEC. 6503. SUSPENSION OF RUNNING OF PERIOD OF LIMITATION.

(a) ISSUANCE OF STATUTORY NOTICE OF DEFICIENCY.—

(1) GENERAL RULE.—The running of the period of limitations provided in section 6501 or 6502 on the making of assessments or the collection by levy or a proceeding in court, in respect of any deficiency as defined in section 6211 (relating to income, estate, and gift taxes), shall (after the mailing of a notice under section 6212(a)) be suspended for the period during which the Secretary or his delegate is prohibited from making the assessment or from collecting by levy or a proceeding in court (and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Tax Court, until the decision of the Tax Court becomes final), and for 60 days thereafter.

(2) CORPORATION JOINING IN CONSOLIDATED INCOME TAX RETURN.—If a notice under section 6212(a) in respect of a deficiency in tax imposed by subtitle A for any taxable year is mailed to a corporation, the suspension of the running of the period of limitations provided in paragraph (1) of this subsection shall apply in the case of corporations with which such corporation made a consolidated income tax return for such taxable year.

(b) ASSETS OF TAXPAYER IN CONTROL OR CUSTODY OF COURT.—The period of limitations on collection after assessment prescribed in section 6502 shall be suspended for the period the assets of the taxpayer [(other than the estate of a decedent or of an incompetent)] are in the control or custody of the court in any proceeding before any court of the United States or of any State [or Territory] or of the District of Columbia, and for 6 months thereafter.

[(c) LOCATION OF PROPERTY OUTSIDE THE UNITED STATES OR REMOVAL OF PROPERTY FROM THE UNITED STATES.—In case collection is hindered or delayed because property of the taxpayer is situated or held outside the United States or is removed from the United States, the period of limitations on collection after assessment prescribed in section 6502 shall be suspended for the period collection is so hindered or delayed. The total suspension of time under this subsection shall not in the aggregate exceed 6 years.]

(c) TAXPAYER OUTSIDE UNITED STATES.—The running of the period of limitations on collection after assessment prescribed in section 6502 shall be suspended for the period during which the taxpayer is outside the United States if such period of absence is for a continuous period of at least 6 months. If the preceding sentence applies and at the time of the taxpayer's return to the United States the period of limitations on collection after assessment prescribed in section 6502 would expire before the expiration of 6 months from the date of his return, such period shall not expire before the expiration of such 6 months.

(d) EXTENSIONS OF TIME FOR PAYMENT OF ESTATE TAX.—The running of the period of limitations for collection of any tax imposed by chapter 11 shall be suspended for the period of any extension of time for payment granted under the provisions of section 6161 (a)(2) or (b)(2) or under the provisions of section 6166.

(e) CERTAIN POWERS OF APPOINTMENT.—The running of the period of limitations for assessment or collection of any tax imposed by chapter 11 shall be suspended in respect of the estate of a decedent claiming a deduction under section 2055(b)(2) until 30 days after the expiration of the period for assessment or collection of the tax imposed by chapter 11 on the estate of the surviving spouse.

(f) EXTENSIONS OF TIME FOR PAYMENT OF TAX ATTRIBUTABLE TO RECOVERIES OF FOREIGN EXPROPRIATION LOSSES.—The running of the period of limitations for collection of the tax attributable to a recovery of a foreign expropriation loss (within the meaning of section 6167(f)) shall be suspended for the period of any extension of time for payment under subsection (a) or (b) of section 6167.

(g) WRONGFUL SEIZURE OF PROPERTY OF THIRD PARTY.—The running of the period of limitations on collection after assessment prescribed in section 6502 shall be suspended for a period equal to the period from the date property (including money) of a third party is wrongfully seized or received by the Secretary or his delegate to the date the Secretary or his delegate returns property pursuant to section 6343(b) or the date on which a judgment secured pursuant to section 7426 with respect to such property becomes final, and for 30 days thereafter. The running of the period of limitations on collection after assessment shall be suspended under this subsection only with respect to the amount of such assessment equal to the amount of money or the value of specific property returned.

[(g)] (*h*) CROSS REFERENCES.—For suspension in case of—

(1) Deficiency dividends of a personal holding company, see section 547(f).
(2) Bankruptcy and receiverships, see subchapter B of chapter 70.
(3) Claims against transferees and fiduciaries, see chapter 71.

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Subchapter D—Periods of Limitation in Judicial Proceedings

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SEC. 6532. PERIODS OF LIMITATION ON SUITS.

(a) SUITS BY TAXPAYERS FOR REFUND.—

(1) GENERAL RULE.—No suit or proceeding under section 7422 (a) for the recovery of any internal revenue tax, penalty, or other sum, shall be begun before the expiration of 6 months from the date of filing the claim required under such section unless the Secretary or his delegate renders a decision thereon within that time, nor after the expiration of 2 years from the date of mailing by certified mail or registered mail by the Secretary or his delegate to the taxpayer of a notice of the disallowance of the part of the claim to which the suit or proceeding relates.

(2) EXTENSION OF TIME.—The 2-year period prescribed in paragraph (1) shall be extended for such period as may be agreed upon in writing between the taxpayer and the Secretary or his delegate.

(3) WAIVER OF NOTICE OF DISALLOWANCE.—If any person files a written waiver of the requirement that he be mailed a notice of disallowance, the 2-year period prescribed in paragraph (1) shall begin on the date such waiver is filed.

(4) RECONSIDERATION AFTER MAILING OF NOTICE.—Any consideration, reconsideration, or action by the Secretary or his delegate with respect to such claim following the mailing of a notice by certified mail or registered mail of disallowance shall not operate to extend the period within which suit may be begun.

(b) SUITS BY UNITED STATES FOR RECOVERY OF ERRONEOUS REFUNDS.—Recovery of an erroneous refund by suit under section 7405 shall be allowed only if such suit is begun within 2 years after the making of such refund, except that such suit may be brought at any time within 5 years from the making of the refund if it appears that any part of the refund was induced by fraud or misrepresentation of a material fact.

(c) SUITS BY PERSONS OTHER THAN TAXPAYERS.—

(1) GENERAL RULE.—Except as provided by paragraph (2), no suit or proceeding under section 7426 shall be begun after the expiration of 9 months from the date of the levy or agreement giving rise to such action.

(2) PERIOD WHEN CLAIM IS FILED.—If a request is made for the return of property described in section 6343(b), the 9-month period prescribed in paragraph (1) shall be extended for a period of 12 months from the date of filing of such request or for a period of 6 months from the date of mailing by registered or certified mail by the Secretary or his delegate to the person making such request of a notice of disallowance of the part of the request to which the action relates, whichever is shorter.

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CHAPTER 76—JUDICIAL PROCEEDINGS

SUBCHAPTER A. Civil actions by the United States.
SUBCHAPTER B. Proceedings by taxpayers *and third parties.*
SUBCHAPTER C. The Tax Court.
SUBCHAPTER D. Court review of Tax Court decisions.
SUBCHAPTER E. Miscellaneous provisions.

Subchapter A—Civil Actions by the United States

Sec. 7401. Authorization.
Sec. 7402. Jurisdiction of district courts.
Sec. 7403. Action to enforce lien or to subject property to payment of tax.
Sec. 7404. Authority to bring civil action for estate taxes.
Sec. 7405. Action for recovery of erroneous refunds.
Sec. 7406. Disposition of judgments and moneys recovered.
Sec. 7407. Cross references.

SEC. 7401. AUTHORIZATION.

No civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Secretary or his delegate authorizes or sanctions the proceedings and the Attorney General or his delegate directs that the action be commenced.

SEC. 7402. JURISDICTION OF DISTRICT COURTS.

(a) TO ISSUE ORDERS, PROCESSES, AND JUDGMENTS.—The district courts of the United States at the instance of the United States shall have such jurisdiction to make and issue in civil actions, writs and orders of injunction, and of *ne exeat republica*, orders appointing receivers, and such other orders and processes, and to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such laws.

(b) TO ENFORCE SUMMONS.—If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides or may be found shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

(c) FOR DAMAGES TO UNITED STATES OFFICERS OR EMPLOYEES.—Any officer or employee of the United States acting under authority of this title, or any person acting under or by authority of any such officer or employee, receiving any injury to his person or property in the discharge of his duty shall be entitled to maintain an action for damages therefor, in the district court of the United States, in the district wherein the party doing the injury may reside or shall be found.

(d) ACTION ON BONDS.—The United States district courts, concurrently with the courts of the several States, shall have jurisdiction of any action brought on the official bond of any internal revenue officer or employee required to give bond under regulations promulgated by authority of section 7803.

(e) TO QUIET TITLE.—The United States district courts shall have jurisdiction of any action brought by the United States to quiet title to property if the title claimed by the United States to such property was derived from enforcement of a lien under this title.

[(e)] *(f)* General Jurisdiction.—

For general jurisdiction of the district courts of the United States in civil actions involving internal revenue, see section 1340 of Title 28 of the United States Code.

SEC. 7403. ACTION TO ENFORCE LIEN OR TO SUBJECT PROPERTY TO PAYMENT OF TAX.

(a) Filing.—In any case where there has been a refusal or neglect to pay any tax, or to discharge any liability in respect thereof, whether or not levy has been made, the Attorney General or his delegate, at the request of the Secretary or his delegate, may direct a civil action to be filed in a district court of the United States to enforce the lien of the United States under this title with respect to such tax or liability or to subject any property, of whatever nature, of the delinquent, or in which he has any right, title, or interest, to the payment of such tax or liability.

(b) Parties.—All persons having liens upon or claiming any interest in the property involved in such action shall be made parties thereto.

(c) Adjudication and Decree.—The court shall, after the parties have been duly notified of the action, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property, and, in all cases where a claim or interest of the United States therein is established, may decree a sale of such property, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the United States. *If the property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of such lien with expenses of sale, as the Secretary or his delegate directs.*

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Subchapter B—Proceedings by Taxpayers *and Third Parties*

Sec. 7421. Prohibition of suits to restrain assessment or collection.
Sec. 7422. Civil actions for refund.
Sec. 7423. Repayments to officers or employees.
[Sec. 7424. Civil action to clear title to property.
[Sec. 7425. Cross references.]
Sec. 7424. Intervention.
Sec. 7425. Discharge of liens.
Sec. 7426. Civil actions by persons other than taxpayers.
Sec. 7427. Cross references.

SEC. 7421. PROHIBITION OF SUITS TO RESTRAIN ASSESSMENT OR COLLECTION.

(a) Tax.—Except as provided in sections 6212(a) and (c), [and 6213(a)] *6213(a), and 7426 (a) and (b)(1)*, no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court *by any person, whether or not such person is the person against whom such tax was assessed.*

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[SEC. 7424. CIVIL ACTION TO CLEAR TITLE TO PROPERTY.

[(a) Obtaining Leave to File.—

[(1) Request for institution of proceedings by United States.—Any person having a lien upon or any interest in the

property referred to in section 7403, notice of which has been duly filed of record in the jurisdiction in which the property is located, prior to the filing of notice of the lien of the United States as provided in section 6323, or any person purchasing the property at a sale to satisfy such prior lien or interest, may make written request to the Secretary or his delegate to authorize the filing of a civil action as provided in section 7403.

[(2) PETITION TO COURT.—If the Secretary or his delegate fails to authorize the filing of such civil action within 6 months after receipt of such written request, such person or purchaser may, after giving notice to the Secretary or his delegate, file a petition in the district court of the United States for the district in which the property is located, praying leave to file a civil action for a final determination of all claims to or liens upon the property in question.

[(3) COURT ORDER.—After a full hearing in open court, the district court may in its discretion enter an order granting leave to file such civil action, in which the United States and all persons having liens upon or claiming any interest in the property shall be made parties.

[(b) ADJUDICATION.—Upon the filing of such civil action, the district court shall proceed to adjudicate the matters involved therein, in the same manner as in the case of civil actions filed under section 7403. For the purpose of such adjudication, the assessment of the tax upon which the lien of the United States is based shall be conclusively presumed to be valid.

[(c) COSTS.—All costs of the proceedings on the petition and the civil action shall be borne by the person filing the civil action.]

SEC. 7424. INTERVENTION.

If the United States is not a party to a civil action or suit, the United States may intervene in such action or suit to assert any lien arising under this title on the property which is the subject of such action or suit. The provisions of section 2410 of title 28 of the United States Code (except subsection (b)) and of section 1444 of title 28 of the United States Code shall apply in any case in which the United States intervenes as if the United States had originally been named a defendant in such action or suit. In any case in which the application of the United States to intervene is denied, the adjudication in such civil action or suit shall have no effect upon such lien.

SEC. 7425. DISCHARGE OF LIENS.

(a) JUDICIAL PROCEEDINGS.—If the United States is not joined as a party, a judgment in any civil action or suit described in subsection (a) of section 2410 of title 28 of the United States Code, or a judicial sale pursuant to such a judgment, with respect to property on which the United States has or claims a lien under the provisions of this title—

(1) shall be made subject to and without disturbing the lien of the United States, if notice of such lien has been filed in the place provided by law for such filing at the time such action or suit is commenced, or

(2) shall have the same effect with respect to the discharge or divestment of such lien of the United States as may be provided with respect to such matters by the local law of the place where such property is situated, if no notice of such lien has been filed in the

place provided by law for such filing at the time such action or suit is commenced or if the law makes no provision for such filing.

If a judicial sale of property pursuant to a judgment in any civil action or suit to which the United States is not a party discharges a lien of the United States arising under the provisions of this title, the United States may claim, with the same priority as its lien had against the property sold, the proceeds (exclusive of costs) of such sale at any time before the distribution of such proceeds is ordered.

(b) Other Sales.—Notwithstanding subsection (a), a sale of property on which the United States has or claims a lien, or a title derived from enforcement of a lien, under the provisions of this title, made pursuant to an instrument creating a lien on such property, pursuant to a confession of judgment on the obligation secured by such an instrument, or pursuant to a nonjudicial sale under a statutory lien on such property—

(1) shall, except as otherwise provided, be made subject to and without disturbing such lien or title, if notice of such lien was filed or such title recorded in the place provided by law for such filing or recording more than 30 days before such sale and the United States is not given notice of such sale in the manner prescribed in subsection (c)(1); or

(2) shall have the same effect with respect to the discharge or divestment of such lien or such title of the United States, as may be provided with respect to such matters by the local law of the place where such property is situated, if—

(A) notice of such lien or such title was not filed or recorded in the place provided by law for such filing more than 30 days before such sale,

(B) the law makes no provision for such filing, or

(C) notice of such sale is given in the manner prescribed in subsection (c)(1).

(c) Special Rules.—

(1) Notice of sale.—Notice of a sale to which subsection (b) applies shall be given (in accordance with regulations prescribed by the Secretary or his delegate) in writing, by registered or certified mail or by personal service, not less than 25 days prior to such sale, to the Secretary or his delegate.

(2) Consent to sale.—Notwithstanding the notice requirement of subsection (b)(2)(C), a sale described in subsection (b) of property shall discharge or divest such property of the lien or title of the United States if the United States consents to the sale of such property free of such lien or title.

(3) Sale of perishable goods.—Notwithstanding the notice requirement of subsection (b)(2)(C), a sale described in subsection (b) of property liable to perish or become greatly reduced in price or value by keeping, or which cannot be kept without great expense, shall discharge or divest such property of the lien or title of the United States if notice of such sale is given (in accordance with regulations prescribed by the Secretary or his delegate) in writing, by registered or certified mail or by personal service, to the Secretary or his delegate before such sale. The proceeds (exclusive of costs) of such sale shall be held as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as such liens and claims had with respect to the property sold, for not less than 30 days after the date of such sale.

(*d*) *Redemption by United States.*—

(*1*) *Right to redeem.*—*In the case of a sale of real property to which subsection* (*b*) *applies to satisfy a lien prior to that of the United States, the Secretary or his delegate may redeem such property within the period of 120 days from the date of such sale or the period allowable for redemption under local law, whichever is longer.*

(*2*) *Amount to be paid.*—*In any case in which the United States redeems real property pursuant to paragraph* (*1*), *the amount to be paid for such property shall be the amount prescribed by subsection* (*d*) *of section 2410 of title 28 of the United States Code.*

(*3*) *Certificate of redemption.*—

(*A*) *In general.*—*In any case in which real property is redeemed by the United States pursuant to this subsection, the Secretary or his delegate shall apply to the officer designated by local law, if any, for the documents necessary to evidence the fact of redemption and to record title to such property in the name of the United States. If no such officer is designated by local law or if such officer fails to issue such documents, the Secretary or his delegate shall execute a certificate or redemption therefor.*

(*B*) *Filing.*—*The Secretary or his delegate shall, without delay, cause such documents or certificate to be duly recorded in the proper registry of deeds. If the State in which the real property redeemed by the United States is situated has not by law designated an office, in which such certificate may be recorded, the Secretary or his delegate shall file such certificate in the office of the clerk of the United States district court for the judicial district in which such property is situated.*

(*C*) *Effect.*—*A certificate of redemption executed by the Secretary or his delegate shall constitute prima facie evidence of the regularity of such redemption and shall, when recorded, transfer to the United States all the rights, title, and interest in and to such property acquired by the person from whom the United States redeems such property by virtue of the sale of such property.*

SEC. 7426. CIVIL ACTIONS BY PERSONS OTHER THAN TAXPAYERS.

(*a*) *Actions Permitted.*—

(*1*) *Wrongful levy.*—*If a levy has been made on property or property has been sold pursuant to a levy, any person* (*other than the person against whom is assessed the tax out of which such levy arose*) *who claims an interest in or lien on such property and that such property was wrongfully levied upon may bring a civil action against the United States in a district court of the United States. Such action may be brought without regard to whether such property has been surrendered to or sold by the Secretary or his delegate.*

(*2*) *Surplus proceeds.*—*If property has been sold pursuant to a levy, any person* (*other than the person against whom is assessed the tax out of which such levy arose*) *who claims an interest in or lien on such property junior to that of the United States and to be legally entitled to the surplus proceeds of such sale may bring a civil action against the United States in a district court of the United States.*

(*3*) *Substituted sale proceeds.*—*If property has been sold pursuant to an agreement described in section 6325*(*b*)(*3*) (*relating to substitution of proceeds of sale*), *any person who claims to be*

legally entitled to all or any part of the amount held as a fund pursuant to such agreement may bring a civil action against the United States in a district court of the United States.

(b) ADJUDICATION.—The district court shall have jurisdiction to grant only such of the following forms of relief as may be appropriate in the circumstances:

(1) INJUNCTION.—If a levy or sale would irreparably injure rights in property which the court determines to be superior to rights of the United States in such property, the court may grant an injunction to prohibit the enforcement of such levy or to prohibit such sale.

(2) RECOVERY OF PROPERTY.—If the court determines that such property has been wrongfully levied upon, the court may—

(A) order the return of specific property if the United States is in possession of such property;

(B) grant a judgment for the amount of money levied upon; or

(C) grant a judgment for an amount not exceeding the amount received by the United States from the sale of such property.

For purposes of subparagraph (C), if the property was declared purchased by the United States at a sale pursuant to section 6335(e) (relating to manner and conditions of sale), the United States shall be treated as having received an amount equal to the minimum price determined pursuant to such section or (if larger) the amount received by the United States from the resale of such property.

(3) SURPLUS PROCEEDS.—If the court determines that the interest or lien of any party to an action under this section was transferred to the proceeds of a sale of such property, the court may grant a judgment in an amount equal to all or any part of the amount of the surplus proceeds of such sale.

(4) SUBSTITUTED SALE PROCEEDS.—If the court determines that a party has an interest in or lien on the amount held as a fund pursuant to an agreement described in section 6325(b)(3) (relating to substitution of proceeds of sale), the court may grant a judgment in an amount equal to all or any part of the amount of such fund.

(c) VALIDITY OF ASSESSMENT.—For purposes of an adjudication under this section, the assessment of tax upon which the interest or lien of the United States is based shall be conclusively presumed to be valid.

(d) LIMITATION ON RIGHTS OF ACTION.—No action may be maintained against any officer or employee of the United States (or former officer or employee) or his personal representative with respect to any acts for which an action could be maintained under this section.

(e) SUBSTITUTION OF UNITED STATES AS PARTY.—If an action, which could be brought against the United States under this section, is improperly brought against any officer or employee of the United States (or former officer or employee) or his personal representative, the court shall order, upon such terms as are just, that the pleadings be amended to substitute the United States as a party for such officer or employee as of the time such action was commenced upon proper service of process on the United States.

(f) PROVISION INAPPLICABLE.—The provisions of section 7422(a) (relating to prohibition of suit prior to filing claim for refund) shall not apply to actions under this section.

(g) INTEREST.—Interest shall be allowed at the rate of 6 percent per annum—

(1) in the case of a judgment pursuant to subsection (b)(2)(B), from the date the Secretary or his delegate receives the money

wrongfully levied upon to the date of payment of such judgment; and

(2) in the case of a judgment pursuant to subsection (b)(2)(C), from the date the Secretary or his delegate receives the money the date of payment of such judgment.

(*h*) *Cross Reference.*—

For period of limitation, see section 6532(c).

SEC. [7425.] *7427.* CROSS REFERENCES.

(1) For exclusion of tax liability from discharge in bankruptcy, see section 17 of the Bankruptcy Act, as amended (52 Stat. 851; 11 U.S.C. 35).

(2) For limit on amount allowed in bankruptcy proceedings on debts owing to the United States, see section 57(j) of the Bankruptcy Act, as amended (52 Stat. 867; 11 U.S.C. 93).

(3) For recognition of tax liens in proceedings under the Bankruptcy Act, see section 67 (b) and (c) of that act, as amended (52 Stat. 876–877; 11 U.S.C. 107).

(4) For collection of taxes in connection with wage earners' plans in bankruptcy courts, see section 680 of the Bankruptcy Act, as added June 22, 1938 (52 Stat. 938; 11 U.S.C. 1080).

(5) For provisions permitting the United States to be made party defendant in a proceeding in a State court for the foreclosure of a lien upon real estate where the United States may have claim upon the premises involved, see section 2410 of Title 28 of the United States Code.

(6) For priority of lien of the United States in case of insolvency, see R.S. 3466 (31 U.S.C. 191.)

(7) For interest on judgments for overpayments, see section 2411 (a) of Title 28 of the United States Code.

(8) For review of a Tax Court decision, see section 7482.

(9) For statute prohibiting suits to replevy property taken under revenue laws, see section 2463 of Title 28 of the United States Code.

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CHAPTER 77—MISCELLANEOUS PROVISIONS

Sec. 7501. Liability for taxes withheld or collected.
Sec. 7502. Timely mailing treated as timely filing.
Sec. 7503. Time for performance of acts where last day falls on Saturday, Sunday, or legal holiday.
Sec. 7504. Fractional parts of a dollar.
Sec. 7505. Sale of personal property [purchased] *acquired* by the United States.
Sec. 7506. Administration of real estate acquired by the United States.
Sec. 7507. Exemption of insolvent banks from tax.
Sec. 7508. Time for performing certain acts postponed by reason of war.
Sec. 7509. Expenditures incurred by the Post Office Department.
Sec. 7510. Exemption from tax of domestic goods purchased for the United States.
Sec. 7511. Exemption of consular officers and employees of foreign states from payment of internal revenue taxes on imported articles.
Sec. 7512. Separate accounting for certain collected taxes, etc.
Sec. 7513. Reproduction of returns and other documents.
Sec. 7514. Authority to prescribe or modify seals.
Sec. 7515. Special statistical studies and compilations and other services on request.
Sec. 7516. Supplying training and training aids on request.

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SEC. 7505. SALE OF PERSONAL PROPERTY [PURCHASED] *ACQUIRED* BY THE UNITED STATES.

(a) Sale.—Any personal property [purchased by the United States under the authority of section 6335(e) (relating to purchase for the account of the United States of property sold under levy)]

acquired by the United States in payment of or as security for debts arising under the internal revenue laws may be sold by the Secretary or his delegate in accordance with such regulations as may be prescribed by the Secretary or his delegate.

(b) Accounting.—In case of the resale of such property, the proceeds of the sale shall be paid into the Treasury as internal revenue collections, and there shall be rendered a distinct account of all charges incurred in such sales.

SEC. 7506. ADMINISTRATION OF REAL ESTATE ACQUIRED BY THE UNITED STATES.

(a) Person Charged With.—The Secretary or his delegate shall have charge of all real estate which is or shall become the property of the United States by judgment of forfeiture under the internal revenue laws, or which has been or shall be assigned, set off, or conveyed by purchase or otherwise to the United States in payment of debts or penalties arising under the laws relating to internal revenue, or which has been or shall be vested in the United States by mortgage or other security for the payment of such debts, *or which has been redeemed by the United States*, and of all trusts created for the use of the United States in payment of such debts due them.

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CHAPTER 80—GENERAL RULES

Subchapter A. Application of internal revenue laws.
Subchapter B. Effective date and related provisions.

Subchapter A—Application of Internal Revenue Laws

Sec. 7801. Authority of the Department of the Treasury.
Sec. 7802. Commissioner of Internal Revenue.
Sec. 7803. Other personnel.
Sec. 7804. Effect of reorganization plans.
Sec. 7805. Rules and regulations.
Sec. 7806. Construction of title.
Sec. 7807. Rules in effect upon enactment of this title.
Sec. 7808. Depositaries for collections.
Sec. 7809. Deposit of collections.
Sec. 7810. Revolving fund for redemption of real property.

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SEC. 7809. DEPOSIT OF COLLECTIONS.

(a) General Rule.—Except as provided in subsections (b) and (c) and in sections 4735, 4762, 7651, 7652, [and 7654,] *7654, and 7810*, the gross amount of all taxes and revenues received under the provisions of this title, and collections of whatever nature received or collected by authority of any internal revenue law, shall be paid daily into the Treasury of the United States under instructions of the Secretary or his delegate as internal revenue collections, by the officer or employee receiving or collecting the same, without any abatement or deduction on account of salary, compensation, fees, costs, charges, expenses, or claims of any description. A certificate of such payment, stating the name of the depositor and the specific account on which the deposit was made, signed by the Treasurer of the United States, designated depositary, or proper officer of a deposit bank, shall be transmitted to the Secretary or his delegate.

(b) DEPOSIT FUNDS.—In accordance with instructions of the Secretary or his delegate, there shall be deposited with the Treasurer of the United States in a deposit fund account—

(1) SUMS OFFERED IN COMPROMISE.—Sums offered in compromise under the provisions of section 7122;

(2) SUMS OFFERED FOR PURCHASE OF REAL ESTATE.—Sums offered for the purchase of real estate under the provisions of section 7506; [and]

(3) SURPLUS PROCEEDS IN SALES UNDER LEVY.—Surplus proceeds in any sale under levy, after making allowance for the amount of the tax, interest, penalties, and additions thereto, and for costs and charges of the levy and sale [.]; *and*

(4) SURPLUS PROCEEDS IN SALES OF REDEEMED PROPERTY.—Surplus proceeds in any sale under section 7506 of real property redeemed by the United States, after making allowance for the amount of the tax, interest, penalties, and additions thereto, and for the costs of sale.

Upon the acceptance of such offer in compromise or offer for the purchase of such real estate, the amount so accepted shall be withdrawn from such deposit fund account and deposited in the Treasury of the United States as internal revenue collections. Upon the rejection of any such offer, the Secretary or his delegate shall refund to the maker of such offer the amount thereof.

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SEC. 7810. REVOLVING FUND FOR REDEMPTION OF REAL PROPERTY.

(a) ESTABLISHMENT OF FUND.—There is established a revolving fund, under the control of the Secretary or his delegate, which shall be available without fiscal year limitation for all expenses necessary for the redemption (by the Secretary or his delegate) of real property as provided in section 7425(d) and section 2410 of title 28 of the United States Code. There are authorized to be appropriated from time to time such sums (not to exceed $1,000,000 in the aggregate) as may be necessary to carry out the purposes of this section.

(b) REIMBURSEMENT OF FUND.—The fund shall be reimbursed from the proceeds of a subsequent sale of real property redeemed by the United States in an amount equal to the amount expended out of such fund for such redemption.

(c) SYSTEM OF ACCOUNTS.—The Secretary or his delegate shall maintain an adequate system of accounts for such fund and prepare annual reports on the basis of such accounts.

FIRST SECTION OF THE ACT OF AUGUST 24, 1935 (49 STAT. 793; 40 U.S.C. 270a)

AN ACT

Requiring contracts for the construction, alteration, and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by an additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said public buildings or public work.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) before any contract,

exceeding $2,000 in amount, for the construction, alteration, or repair of any public building or public work of the United States is awarded to any person, such person shall furnish to the United States the following bonds, which shall become binding upon the award of the contract to such person, who is hereinafter designated as "contractor":

(1) A performance bond with a surety or sureties satisfactory to the officer awarding such contract, and in such amount as he shall deem adequate, for the protection of the United States.

(2) A payment bond with a surety or sureties satisfactory to such officer for the protection of all persons supplying labor and material in the prosecution of the work provided for in said contract for the use of each such person. Whenever the total amount payable by the terms of the contract shall be not more than $1,000,000 the said payment bond shall be in a sum of one-half the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract shall be more than $1,000,000 and not more than $5,000,000, the said payment bond shall be in a sum of 40 per centum of the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract shall be more than $5,000,000 the said payment bond shall be in the sum of $2,500,000.

(b) The contracting officer in respect of any contract is authorized to waive the requirement of a performance bond and payment bond for so much of the work under such contract as is to be performed in a foreign country if he finds that it is impracticable for the contractor to furnish such bonds.

(c) Nothing in this section shall be construed to limit the authority of any contracting officer to require a performance bond or other security in addition to those, or in cases other than the cases specified in subsection (a) of this section.

(d) Every performance bond required under this section shall specifically provide coverage for taxes imposed by the United States which are collected, deducted, or withheld from wages paid by the contractor in carrying out the contract with respect to which such bond is furnished. However, the United States shall give the surety or sureties on such bond written notice, with respect to any such unpaid taxes attributable to any period, within ninety days after the date when such contractor files a return for such period, except that no such action shall be given more than one hundred and eighty days from the date when a return for the period was required to be filed under the Internal Revenue Code of 1954. No suit on such bond for such taxes shall be commenced by the United States unless notice is given as provided in the preceding sentence, and no such suit shall be commenced after the expiration of one year after the day on which such notice is given.

TITLE 28, UNITED STATES CODE

* * * * * * *

§ 1346. United States as defendant.

(a) The district courts shall have original jurisdiction, concurrent with the Court of Claims, of:

(1) Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or

illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws;

(2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

(b) Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

(c) The jurisdiction conferred by this section includes jurisdiction of any set-off, counterclaim, or other claim or demand whatever on the part of the United States against any plaintiff commencing an action under this section.

(d) The district courts shall not have jurisdiction under this section of any civil action or claim for a pension.

(*e*) *The district courts shall have original jurisdiction of any civil action against the United States provided in section 7426 of the Internal Revenue Code of 1954.*

* * * * * * *

§ 1402. United States as defendant.

(a) Any civil action against the United States under subsection (a) of section 1346 of this title may be prosecuted only:

(1) Except as provided in paragraph (2), in the judicial district where the plaintiff resides;

(2) In the case of a civil action by a corporation under paragraph (1) of subsection (a) of section 1346, in the judicial district in which is located the principal place of business or principal office or agency of the corporation; or if it has no principal place of business or principal officer or agency in any judicial district (A) in the judicial district in which is located the office to which was made the return of the tax in respect to which the claim is made, or (B) if no return was made, in the judicial district in which lies the District of Columbia. Nothwithstanding the foregoing provisions of this paragraph a district court, for the convenience of the parties and witnesses, in the interest of justice, may transfer any such action to any other district or division.

(b) Any civil action on a tort claim against the United States under subsection (b) of section 1346 of this title may be prosecuted only in the judicial district where the plaintiff resides or wherein the act or omission complained of occurred.

(*c*) *Any civil action against the United States under subsection* (*e*) *of section 1346 of this title may be prosecuted only in the judicial district*

where the property is situated at the time of levy, or if no levy is made, in the judicial district in which the event occurred which gave rise to the cause of action.

* * * * * * *

§ 2410. Actions affecting property on which United States has lien.

[(a) Under the conditions prescribed in this section and section 1444 of this title for the protection of the United States, the United States may be named a party in any civil action or suit in any district court, or in any State court having jurisdiction of the subject matter, to quiet title to or for the foreclosure of a mortgage or other lien upon real or personal property on which the United States has or claims a mortgage or other lien.

[(b) The complaint shall set forth with particularity the nature of the interest or lien of the United States. In actions in the State courts service upon the United States shall be made by serving the process of the court with a copy of the complaint upon the United States attorney for the district in which the action is brought or upon an assistant United States attorney or clerical employee designated by the United States attorney in writing filed with the clerk of the court in which the action is brought and by sending copies of the process and complaint, by registered mail, or by certified mail, to the Attorney General of the United States at Washington, District of Columbia. In such actions the United States may appear and answer, plead or demur within sixty days after such service or such further time as the court may allow.

[(c) A judicial sale in such action or suit shall have the same effect respecting the discharge of the property from liens and encumbrances held by the United States as may be provided with respect to such matters by the local law of the place where the property is situated. A sale to satisfy a lien inferior to one of the United States, shall be made subject to and without disturbing the lien of the United States, unless the United States consents that the property may be sold free of its lien and the proceeds divided as the parties may be entitled. Where a sale of real estate is made to satisfy a lien prior to that of the United States, the United States shall have one year from the date of sale within which to redeem. In any case where the debt owing the United States is due, the United States may ask, by way of affirmative relief, for the foreclosure of its own lien and where property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of its claim with expenses of sale, as may be directed by the head of the department or agency of the United States which has charge of the administration of the laws in respect of which the claim of the United States arises.]

(a) Under the conditions prescribed in this section and section 1444 of this title for the protection of the United States, the United States may be named a party in any civil action or suit in any district court, or in any State court having jurisdiction of the subject matter—

(1) to quiet title to,

(2) to foreclose a mortgage or other lien upon,

(3) to partition,

(4) to condemn, or

(5) of interpleader or in the nature of interpleader with respect to, real or personal property on which the United States has or claims a mortgage or other lien.

(b) The complaint or pleading shall set forth with particularity the nature of the interest or lien of the United States. In actions or suits involving liens arising under the internal revenue laws, the complaint or pleading shall include the name and address of the taxpayer whose liability created the lien and, if a notice of the tax lien was filed, the identity of the internal revenue office which filed the notice, and the date and place such notice of lien was filed. In actions in the State courts service upon the United States shall be made by serving the process of the court with a copy of the complaint upon the United States attorney for the district in which the action is brought or upon an assistant United States attorney or clerical employee designated by the United States attorney in writing filed with the clerk of the court in which the action is brought and by sending copies of the process and complaint, by registered mail, or by certified mail, to the Attorney General of the United States at Washington, District of Columbia. In such actions the United States may appear and answer, plead or demur within sixty days after such service or such further time as the court may allow.

(c) A judgment or decree in such action or suit shall have the same effect respecting the discharge of the property from the mortgage or other lien held by the United States as may be provided with respect to such matters by the local law of the place where the court is situated. However, an action to foreclose a mortgage or other lien, naming the United States as a party under this section, must seek judicial sale. A sale to satisfy a lien inferior to one of the United States shall be made subject to and without disturbing the lien of the United States, unless the United States consents that the property may be sold free of its lien and the proceeds divided as the parties may be entitled. Where a sale of real estate is made to satisfy a lien prior to that of the United States, the United States shall have one year from the date of sale within which to redeem, except that with respect to a lien arising under the internal revenue laws the period shall be 120 days or the period allowable for redemption under State law, whichever is longer, and in any case in which, under the provisions of section 505 of the Housing Act of 1950, as amended (12 U.S.C. 1701k), and subsection (d) of section 1820 of title 38 of the United States Code, the right to redeem does not arise, there shall be no right of redemption. In any case where the debt owing the United States is due, the United States may ask, by way of affirmative relief, for the foreclosure of its own lien and where property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of its claim with expenses of sale, as may be directed by the head (or his delegate) of the department or agency of the United States which has charge of the administration of the laws in respect to which the claim of the United States arises.

(d) In any case in which the United States redeems real property under this section or section 7425 of the Internal Revenue Code of 1954, the amount to be paid for such property shall be the sum of—

(1) the actual amount paid by the purchaser at such sale (which, in the case of a purchaser who is the holder of the lien being foreclosed, shall include the amount of the obligation secured by such lien to the extent satisfied by reason of such sale),

(2) interest on the amount paid (as determined under paragraph (1)) at 6 percent per annum from the date of such sale, and

(3) the amount (if any) equal to the excess of (A) the expenses necessarily incurred in connection with such property, over (B)

the income from such property plus (to the extent such property is used by the purchaser) a reasonable rental value of such property.

[(d)] (*e*) Whenever any person has a lien upon any real or personal property, duly recorded in the jurisdiction in which the property is located, and a junior lien, other than a tax lien, in favor of the United States attaches to such property, such person may make a written request to the officer charged with the administration of the laws in respect of which the lien of the United States arises, to have the same extinguished. If after appropriate investigation, it appears to such officer that the proceeds from the sale of the property would be insufficient to wholly or partly satisfy the lien of the United States, or that the claim of the United States has been satisfied or by lapse of time or otherwise has become unenforceable, such officer shall so report to the Comptroller General who may issue a certificate releasing the property from such lien.

SECTION 10

HOUSE FLOOR DEBATE

(From the Daily Congressional Record)

70-903 O-66—37

[*September 12, 1966*]

[*P. 21292*]

FEDERAL TAX LIEN ACT OF 1966

Mr. TRIMBLE. Mr. Speaker, by direction of the Committee on Rules, I call up the resolution (H. Res. 1005) providing for the consideration of the bill (H.R. 11256) to amend the Internal Revenue Code of 1954 with respect to the priority and effect of Federal tax liens and levies, and for other purposes, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1005

Resolved, That upon the adoption of this resolution it shall be in order to move that

[*P. 21293*]

the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 11256) to amend the Internal Revenue Code of 1954 with respect to the priority and effect of Federal tax liens and levies, and for other purposes, and all points of order against said bill are hereby waived. After general debate, which shall be confined to the bill and shall continue not to exceed four hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means, the bill shall be considered as having been read for amendment. It shall be in order to consider without the intervention of any point of order the amendment in the nature of a substitute recommended by the Committee on Ways and Means now printed in the bill. No other amendment to the bill or committee amendment in the nature of a substitute shall be in order except amendments offered by direction of the Committee on Ways and Means, and said amendments shall be in order, any rule of the House to the contrary notwithstanding, but such amendments shall not be subject to amendment. At the conclusion of such consideration the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Arkansas [Mr. TRIMBLE] for 1 hour.

Mr. TRIMBLE. Mr. Speaker, I yield 30 minutes to the gentleman from Nebraska [Mr. MARTIN] and pending that I reserve such time as I may consume.

Mr. Speaker, House Resolution 1005 provides for consideration of H.R. 11256, a bill to amend the Internal Revenue Code of 1954 with respect to the priority and effect of Federal tax liens and levies, and for other purposes. The resolution provides a closed rule, waiving points of order, with 4 hours of general debate, making it in order to consider the committee substitute without the intervention of a point of order.

H.R. 11256 is in part an attempt to conform the lien provisions of the internal revenue laws to the concepts developed in a Uniform Commercial Code. It represents an effort to adjust the provisions in the internal revenue laws relating to the collection of taxes of delinquent persons to the more recent developments in commercial practice—permitted and protected under State law—and to deal with a multitude of technical problems which have arisen over the past 50 years.

Under present law, the lien for Federal taxes arises when a taxpayer's liability is assessed. The lien attaches to all of the property he then holds or subsequently acquires. The assesment is made when the Internal Revenue Service—which occurs, in the case of a taxpayer who voluntarily shows the tax liability on his return, shortly after the time the return is filed. Although the lien arises on the date of assessment, present law provides that purchasers and certain categories of secured creditors are given priority over the tax lien up to the time a notice of the tax lien is filed in the appropriate local office as designated by State law. Mortgagees, pledgees, purchasers, and judgment lien creditors are given priority status. In addition, in the case of securities and motor vehicles, present law provides that even a filed Federal tax lien is not generally to be effective as against a purchaser or a mortgagee or pledgee of the securities or a purchaser of motor vehicles.

H.R. 11256 would substantially improve the status of private secured creditors. This is accomplished, first, by expanding the categories of creditors protected as against a nonfiled tax lien to include a mechanic's lienor.

Second, various types of secured creditor interests already having, or given, priority status over tax liens are specifically defined, and it is provided that where those interests qualify under the definities they are to be accorded this priority status whether or not they are in all other respects definite and complete at the time notice of the tax lien is filed.

Third, the bill adds to the "superiority" status accorded securities and motor vehicles an additional eight categories of interests which are to be effective as against a tax lien, even though notice of the lien has been filed.

Fourth, a priority status is provided for interests arising under three types of financing agreements entered into before the tax lien filing—commercial transactions financing, real property construction or improvement financing, and obligatory disbursements—even though the funds are advanced or the property comes into existence after the tax lien filing. In the case of commercial transactions financing, the protection generally is afforded even though the property underlying the lien is not yet in existence or is turned over within a short time—45 days—after the tax lien filing as long as the loan or purchase is made

within this time. In the absence of this grace period, commercial factors and other lenders would have to check on a daily basis to see if the tax lien is filed to protect their interests. Interests arising under the real property construction and improvement financing agreements are protected even though loans are made after the tax lien filing because the construction is expected to enhance the value of the property underlying the tax lien. Interests arising under an obligatory disbursement agreement are protected because a person is obliged under a preexisting agreement to make disbursements after a tax lien filing and someone other than the taxpayer has relied on this obligation.

Fifth, a limited type of priority is given by the bill with respect to two other categories. In the case of security interest, generally, protection is afforded for a period of up to 45 days after the filing of a tax lien. Also, interest paid with respect to interest having priority over a Federal tax lien and costs of preserving property subject to an interest having a priority over a tax lien are given a priority over tax liens even though notice has been filed.

In addition to dealing with the relative priority of creditors' interests as against Federal tax liens, the bill also makes numerous modifications in the provisions of the internal revenue laws dealing with the procedures to be followed in collecting the taxes of a delinquent person. In general terms, these modifications are intended to represent a reasonable accommodation of the interests of the Government in collecting the taxes of delinquent taxpayers with the rights of the taxpayers and third parties. The modifications are concerned with the procedures of levying upon property of a delinquent taxpayer, the liability of lenders, sureties, and so forth, for with holding taxes, the running of the statute of limitations in the case of delinquent tax liabilities, procedures arising out of, or with respect to the sale of property of delinquent taxpayers, the court procedures to be followed with respect to tax liens, and provision for the redemption of real property by the United States, where sold by a creditor with a higher priority.

Mr. Speaker, I urge the adoption of House Resolution 1005 in order that the bill may be considered.

Mr. HALL. Mr. Speaker, will the gentleman yield?

Mr. TRIMBLE. I yield to the gentleman from Missouri.

Mr. HALL. Mr. Speaker, I appreciate the gentleman yielding.

Mr. Speaker, I want to propound the same question on waiving points of order. Can the gentleman from Arkansas, a member of the Committee on Rules, advise me as to whether the points of order on line 7 and 8, page 1, of House Resolution 1005, and again as to pertinence to the substitute amendment by the committee on lines 2 and 3 of page 2 for the same purpose as in the previous rule; namely, to comply with the Ramseyer rule in preventing the intervention of a point of order calling for the reprinting of the entire tax bill, in this case the Internal Revenue Code of 1954, if it were not waived; and I ask if that is the sole purpose of waiving points of order?

Mr. TRIMBLE. Mr. Speaker, I yield to my colleague from Arkansas [Mr. MILLS].

Mr. MILLS. Mr. Speaker, I thank my colleague for yielding.

The gentleman from Missouri has evaluated the situation correctly. Without waiver of points of order in this instance we might have been required to reprint in the report of the committee all the provisions of the Internal Revenue Code. There is no provision of the bill H.R. 11256 that I know of to which a point of order could be made and require that such part be stricken on the basis of a point of order. All the provisions are germane to the bill.

Mr. HALL. Mr. Speaker, if the gentleman will yield further, does the distinguished gentleman from Arkansas, the chairman of the Committee on Ways and Means, agree with me that the resolution does obviate and preclude the right of individual Members, albeit in the interest of a saving of printing?

Mr. MILLS. Only does it do that, as I understand the situation, if some part of the bill itself were subject to a point of order, and there is no part of the bill that I know of that would be subject to a point of order because all parts deal

[*P. 21294*]

with the same subject matter. They are germane to this subject matter and all, of course, are changes within the Internal Revenue Code.

Mr. GROSS. Mr. Speaker, will the gentleman yield?

Mr. TRIMBLE. I yield to the gentleman from Iowa.

Mr. GROSS. Does not this rule provide that only amendments to the rule may be offered that are proposed by the committee, and then no amendment could be offered to that amendment?

Mr. MILLS. That is true.

Mr. GROSS. So that it goes further than compliance with the Ramseyer rule——

Mr. MILLS. If the gentleman will yield to me, I was speaking to the point raised by our friend, the gentleman from Missouri [Mr. HALL], and not on the question of what amendments may be offered. He was raising the question, as I understood, as to the waiving of points of order.

Mr. GROSS. Is this bill wide open to amendment?

Mr. MILLS. No, the bill would come in under this rule, which would preclude amendments except committee amendments.

Mr. GROSS. So this rule would effectively preclude a Member from offering an amendment to the bill?

Mr. MILLS. The bill itself would amend the Internal Revenue Code in many respects, and I suspect it would open the Internal Revenue Code to amendment in most respects.

Mr. GROSS. In the absence of this rule it would be possible to offer an amendment to this bill to increase taxes or lower, would it not?

Mr. MILLS. Yes, that would be a possibility.

Mr. GROSS. We might here, now and today, settle the issue, the indecision of the President as to whether he is going to ask for an increase in taxes. Of course, I am sure we are all aware that if he does, it will come after the election, not before the election, but we could here today settle the issue for the President and take politics out of the fixing of taxes. If it were not for this rule, at least we could make the attempt to do so. Does the gentleman agree with that?

Mr. MILLS. It would be possible to offer amendments here, as I take it, to increase taxes or to lower taxes, to increase personal exemptions or to do otherwise.

Mr. GROSS. I thank the gentleman for yielding.

Mr. MARTIN of Nebraska. Mr. Speaker, as the gentleman from Arkansas has explained, House Resolution 1005 makes in order the consideration of H.R. 11256, the Federal Tax Lien Act of 1966. The rule provides for 4 hours of debate under a closed rule. No amendments will be in order after the close of debate unless offered by direction of the Committee on Ways and Means. All points of order are waived against the bill.

These two provisions, the closed rule and the waiver of all points of order against the bill are steps which the Rules Committee has somewhat reluctantly taken in this instance. It has done so because the bill amends the Internal Revenue Code of 1954. To avoid opening the entire code to amendment, and to avoid the needless expense of printing the entire code, as required by the Ramseyer rule, the Rules Committee has acted in this manner. I should point out that those parts of the Internal Revenue Code that are proposed to be amended, as well as that part of title 28, dealing with tax problems where the Government is a defendant, are set out so that Members can see the proposed changes inserted in the text.

Mr. Speaker, the purpose of H.R. 11256 is to bring up to date the Federal tax lien statutes; they have not been comprehensively reviewed for about 50 years. In that time many changes have occurred in the complex field of commercial transactions; many of these changes have been codified in the Uniform Commercial Code which is in use in over 40 States. In part the bill reported by the Committee on Ways and Means represents an effort to bring tax lien provisions into line with the updated commercial law. The bill also is intended to reach a reasonable accommodation between the interests of the Federal Government in collecting delinquent taxes and the rights of taxpayers and third parties whose interests are affected.

Under current law, a lien for Federal taxes arises when the taxpayer's liability is assessed; it attaches to all property he owns or may later acquire. Although the Federal tax lien attaches at the time of assessment, the law provides that purchasers of the taxpayer's property, and some categories of secured creditors are given a priority up to the time a notice of the lien is filed. Mortgagees, pledgees, and judgment creditors are now given this priority.

H.R. 11256 improves the status of private, secured creditors by expanding the categories of creditors so protected substantially, and these protected categories are defined in law so that persons whose interests qualify, are accorded priority status whether or not such interests are in all respects definite and complete at the time notice of the Federal tax lien is filed.

Other changes are made, but this is a highly technical field and I will leave it to the committee members to go into greater detail.

The bill was reported unanimously; it is supported by the Treasury. I know of no opposition to the rule, Mr. Speaker, and I urge its adoption. I have no further requests for time and I yield back the balance of my time.

I have no further requests for time.

Mr. TRIMBLE. Mr. Speaker, I have no further requests for time.

I move the previous question.

The previous question was ordered.

The SPEAKER pro tempore. The question is on agreeing to the resolution.

The question was taken; and the Speaker pro tempore announced that the "ayes" appeared to have it.

Mr. HALL. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Doorkeeper will close the doors, the Sergeant at Arms will notify absent Members, and the Clerk will call the roll.

The question was taken; and there were—yeas 243, nays 9, not voting 180, as follows:

[Roll No. 275]

[*P. 21295*]

YEAS—243

Abbitt
Adams
Anderson, Ill.
Anderson, Tenn.
Andrews, George W.
Andrews, N. Dak.
Arends
Ashmore
Ayres
Beckworth
Belcher
Bell
Bennett
Betts
Bingham
Blatnik
Boggs
Bolton
Bow
Brademas
Bray
Brock
Brooks
Brown, Clarence J., Jr.
Broyhill, N.C.
Broyhill, Va.
Burke
Burleson
Burton, Calif.
Byrnes, Wis.
Callan
Cameron
Carter.
Casey
Cederberg
Chamberlain
Chelf
Clancy
Clausen, Don H.
Clawson, Del
Clevenger
Cohelan
Collier
Conable
Conte
Cramer
Curtis
Dague
Davis, Wis.
Dawson
de la Garza
Dent
Denton
Devine
Dingell
Dole
Dow
Dowdy
Downing
Dulski
Duncan, Tenn.
Dyal
Edwards, Ala.
Edwards, Calif.
Edwards, La.
Ellsworth
Everett
Evins, Tenn.
Fascell
Findley
Flood
Fogarty
Foley
Ford, Gerald R.
Fountain
Fraser
Fuqua
Gathings
Gibbons
Gilbert
Gonzalez
Goodell
Gray
Green, Pa.
Grider
Griffiths
Gubser
Haley
Halpern
Hamilton
Hansen, Iowa
Hardy
Harsha
Harvey, Ind.
Harvey, Mich.
Hathaway
Hawkins
Hays
Hechler
Henderson
Herlong
Holifield
Holland
Hosmer
Hull
Hungate
Hutchinson
Jacobs
Jarman
Jennings
Joelson
Johnson, Calif.
Johnson, Okla.
Johnson, Pa.
Jonas
Jones, Ala.
Karsten
Kastenmeier
Kee
King, Calif.
Kirwan
Kluczynski
Kornegay
Kunkel
Laird
Langen
Latta
Lennon
Lipscomb
Long, La.
Long, Md.
Love
McCarthy
McDade
McEwen
McFall
McGrath
Mackie
Madden
Mahon
Marsh
Martin, Nebr.
Matsunaga
Matthews
Meeds
Miller
Mills
Mink
Minshall
Mize
Monagan
Moore
Morgan
Mosher
Moss
Multer
Murphy, Ill.
Murphy, N.Y.
Natcher
Nedzi
Nelsen
O'Brien
O'Hara, Ill.
O'Hara, Mich.
O'Neal, Ga.
Ottinger
Patman
Patten
Perkins
Pike
Pirnie
Poage
Poff
Price
Quie
Quillen
Race
Randall
Redlin
Reid, Ill.
Reuss
Rhodes, Ariz.
Rhodes, Pa.
Rivers, S.C.
Rivers, Alaska
Roberts
Robison
Rogers, Colo.
Rogers, Fla.
Rogers, Tex.
Rooney, N.Y.
Rosenthal
Roudebush
Roush
Roybal
Ryan
Satterfield
Scheuer
Schisler
Schmidhauser
Schneebeli
Schweiker
Secrest
Selden
Shipley
Shriver
Sikes
Slack
Smith, Iowa
Smith, Va.
Springer
Stafford
Staggers
Stalbaum
Stanton
Stubblefield
Sullivan
Taylor
Teague, Tex.
Tenzer
Thompson, N.J.
Thomson, Wis.
Trimble
Tuck
Tupper
Ullman
Utt
Vanik
Vivian
Waggonner
Waldie
Watkins
Watts
White, Tex.
Whitener
Whitten
Williams
Wilson, Charles H.
Wright
Wyatt
Yates
Young
Younger

NAYS—9

Ashbrook
Buchanan
Burton, Utah
Derwinski
Gross
Hall
Rumsfeld
Skubitz
Watson

NOT VOTING—180

Abernethy
Adair
Addabbo
Albert
Andrews, Glenn
Annunzio
Ashley
Aspinall
Bandstra
Baring
Barrett
Bates
Battin
Berry
Boland
Bolling
Broomfield
Brown, Calif.
Byrne, Pa.
Cabell
Cahill
Callaway
Carey
Celler
Clark
Cleveland
Colmer
Conyers
Cooley
Corbett
Corman
Craley
Culver
Cunningham
Curtin
Daddario
Daniels
Davis, Ga.
Delaney
Dickinson
Diggs
Donohue
Dorn
Duncan, Org.
Dwyer
Edmondson
Erlenborn
Evans, Colo.
Fallon
Farbstein
Farnsley
Farnum
Feighan
Fino
Fisher
Flynt
Ford, William D.
Frelinghuysen
Fridel
Fulton, Pa.
Fulton, Tenn.
Gallagher
Garmatz
Gettys
Giaimo
Gilligan
Grabowski
Green, Oreg.
Greigg
Grover
Gurney
Hagan, Ga.
Hagen, Calif.
Hall
Halleck
Hanley
Hanna
Hansen, Idaho
Hansen, Wash.
Hébert
Helstoski
Hicks
Horton
Howard
Huot
Ichord
Irwin
Jones, Mo.
Jones, N.C.
Karth
Keith
Kelly
Keogh
King, N.Y.
King, Utah
Krebs
Kupferman
Landrum
Leggett
McClory
McCulloch
McDowell
McMillan
McVicker
Macdonald
MacGregor
Machen
Mackay
Mailliard
Martin, Ala.
Martin, Mass.
Mathias
May
Michel
Minish
Moeller
Moorhead
Morris
Morrison
Morse
Morton
Murray
Nix
O'Konski
Olsen, Mont.
Olson, Minn.
O'Neill, Mass.
Passman
Pelly
Pepper
Philbin
Pickle
Pool
Powell
Pucinski
Purcell
Rees
Reid, N.Y.
Reifel
Reinecke
Resnick
Rodino
Ronan
Roncalio
Rooney, Pa.
Rostenkowski
St Germain
St. Onge
Saylor
Scott
Senner
Sickles
Sisk
Smith, Calif.
Smith, N.Y.
Steed
Stephens
Stratton
Sweeney
Talcott
Teague, Calif.
Thomas
Thompson, Tex.
Todd
Toll
Tunny
Tuten
Udall
Van Deerlin
Vigorito
Walker, Miss.
Walker, N. Mex.
Weltner
Whalley
White, Idaho
Widnall
Willis
Wilson, Bob
Wolff
Wydler
Zablocki

So the resolution was agreed to.

The Clerk announced the following pairs:

Mr. Keogh with Mr. King of New York.
Mr. Hébert with Mrs. Dwyer.
Mr. Garmatz with Mr. Saylor.
Mr. O'Neill of Massachusetts with Mr. Martin of Massachusetts.
Mr. Zablocki with Mrs. May.
Mr. Wolff with Mr. O'Konski.
Mr. Delaney with Mr. Reid of New York.
Mr. Sweeney with Mr. Reinecke.
Mr. Sickles with Mr. McCulloch.
Mr. Rooney of Pennsylvania with Mr. Halleck.
Mr. Daniels with Mr. Fulton of Pennsylvania.
Mr. Rodino with Mr. Fino.
Mr. Minish with Mr. Curtin.
Mr. Helstoski with Mr. Whalley.
Mr. Friedel with Mr. Cahill.
Mr. Gallagher with Mr. Wydler.
Mr. Morris with Mr. Widnall.
Mr. Pickle with Mr. Pelly.

Mr. Gilligan with Mr. Morse.
Mr. Leggett with Mr. Berry.
Mr. Howard with Mr. Callaway.
Mr. Barrett with Mr. Gurney.
Mr. Addabbo with Mr. Walker of Mississippi.
Mr. Aspinall with Mr. Bates.
Mr. Byrne of Pennsylvania with Mr. Talcott.
Mr. Albert with Mr. Adair.
Mrs. Kelly with Mr. Reifel.
Mr. Moeller with Mr. Smith of New York.
Mr. Fallon with Mr. Michel.
Mr. Edmondson with Mr. Hansen of Idaho.
Mr. Fulton of Tennessee with Mr. Cleveland.
Mr. Farbstein with Mr. Broomfield.
Mr. Grabowski with Mr. Keith.
Mr. Walker of New Mexico with Mr. Frelinghuysen.
Mr. Van Deerlin with Mr. Erlenborn.
Mr. Stratton with Mr. Dickinson.
Mr. Moorhead with Mr. Cunningham.
Mr. Macdonald with Mr. Battin.
Mr. White of Idaho with Mr. Morton.
Mr Donohue with Mr. Martin of Alabama.
Mr. Philbin with Mr. MacGregor.
Mr. Feighan with Mr. Grover.
Mr. Evans with Mr. Kupferman.
Mr. Casey with Mr. Glenn Andrews.
Mr. Colmer with Mr. Bob Wilson.
Mr. Celler with Mr. Conyers.
Mr. Bandstra with Mr. Duncan of Oregon.
Mr. Karth with Mr. Culver.
Mr. King of Utah with Mr. Machen.
Mr. St. Onge with Mr. Pepper.
Mr. St Germain with Mr. Powell.
Mr. Annunzio with Mr. Diggs.
Mr. Boland with Mr. Nix.
Mr. Brown of California with Mr. Vigorito.
Mr. Cooley with Mr. Tuten.
Mr. Giaimo with Mr. Scott.
Mr. Daddario with Mr. Hicks.
Mr. McDowell with Mr. Senner.
Mr. Morrison with Mr. Corman.
Mr. Pucinski with Mr. Dorn.
Mr. Resnick with Mr. Stephens.
Mr. Krebs with Mr. Sisk.
Mr. Olsen of Montana with Mr. McVicker.
Mr. Weltner with Mr. Olson of Minnesota.
Mrs. Thomas with Mr. Hagen of California.
Mr. Roncalio with Mr. Hanley.
Mr. Rostenkowski with Mrs. Green of Oregon.
Mr. Ronan with Mr. Gettys.
Mr. Craley with Mr. Purcell.
Mr. Huot with Mr. Mackay.
Mr. Irwin with Mr. Tunney.
Mr. Ichord with Mr. Udall.
Mr. Pool with Mr. McClory.
Mr. Rees with Mr. Horton.
Mr. Baring with Mr. Smith of California.
Mr. Jones of North Carolina with Mr. Mathias.
Mr. Abernethy with Mr. Teague of California.
Mr. Davis of Georgia with Mr. Mailliard.
Mr. Willis with Mrs. Hansen of Washington.
Mr. Passman with Mr. Hagan of Georgia.
Mr. Greigg with Mr. William D. Ford.
Mr. Fisher with Mr. Flynt.
Mr. Farnsley with Mr. Todd.
Mr. Thompson of Texas with Mr. Farnum.
Mr. Cabell with Mr. Ashley.
Mr. Toll with McMillan.
Mr. Murray with Mr. Landrum.
Mr. Clark with Mr. Hanna.

The result of the vote was announced as above recorded.

The doors were opened.

A motion to reconsider was laid on the table.

[*P. 21308*]

FEDERAL TAX LIEN ACT OF 1966

Mr. MILLS. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 11256) to amend the Internal Revenue Code of 1954 with respect to the priority and effect of Federal tax liens and levies, and for other purposes.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 11256, with Mr. PICKLE in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from Arkansas [Mr. MILLS] will be recognized for 2 hours, and the gentleman from Wisconsin [Mr. BYRNES] will be recognized for 2 hours.

The Chair recognizes the gentleman from Arkansas.

Mr. MILLS. Mr. Chairman, I yield myself 10 minutes.

Mr. Chairman, the bill H.R. 11256, which we are considering today, represents the first substantia revision of the Federal tax lien laws since before the adoption of the income tax in 1913.

Our internal revenue laws have for many decades provided rules for determining the relative rights of the taxpayer, his creditors, and the United States, when a tax liability has been assessed and has become due and owing upon notice and demand.

During this time there has been a remarkable development of commercial transactions, financing devices, and security interests. The Uniform Commercial Code, which in a few years has become the law in substantially all of our States, is both evidence of, and a contributor to, these devlopments. More and more, the existing procedures for handling Federal tax liens has tended to impede this commercial development. Also, experience under the tax lien procedure has indicated other instances where the present rules work inequities, both in and out of the commercial area.

For over 8 years now, the American Bar Association, through a special committee composed of representatives of four of its sections, has worked with representatives of the Treasury Department and committee staff to revise the Internal Revenue Code's lien provisions with a view to meeting the problems I have mentioned, and also to improving the ability of the Federal tax liens to fulfill their original function of assisting in the collection of the revenues.

Although there were many members of the American Bar Association who participated in these discussions and this work, I would especially like to mention the name of the one who acted as chairman of that group, Mr. Laurens Williams, who is a tax attorney here in the city of Washington, and who formerly served in the Treasury Department as the senior tax lawyer. He worked with Treasury people, his own committee, and the staffs of our own committees. I do not know how many months, how many hours, how many days were spent in the development of this program, but those who worked on this certainly have rendered a great service in improving the tax laws.

Though, as in the case of most bills, it may not be completely satisfactory to everyone, I believe this bill offers many changes which are acceptable to practically everyone and are generally recognized as being an improvement in the existing situation.

The general tax lien arises at the time a tax liability is assessed. The assessment is made by recording the tax liability in the books of the district director, which essentially is a private, or "secret," act. In the case of the taxpayer who voluntarily show the liability on his tax return, the assessment occurs shortly after the return is filed. When the assessment is made, the general tax lien attaches to all of the taxpayer's property. It continues to attach to all his property, including property that he acquires after the date of assessment, until the tax liability is satisfied or can no longer be enforced because of the statute of limitations.

The general rule in determining the priority of liens and other interests is that any interest which attaches takes priority over those interests which attach later and is subordinate to those which attached earlier. However, even though the statute provides that the general tax lien attaches as soon as the assessment is made, without filing or any other public act, it also provides that it is subordinate to four categories of persons whose interests attach after assessment but before notice of the tax lien is filed. These four categories are mortgagees, pledgees, purchasers, and judgment creditors.

In addition, even where notice of the Federal tax lien has been filed, the statute presently provides that a tax lien is subordinate to mortgagees, pledgees, and purchasers of securities and to purchasers of motor vehicles. These are known as superpriorities in that they are given a priority over a tax lien even though it has been filed.

In the area covered by this brief description, many problems have arisen. Some are technical problems with policy overtones—others are clearly policy problems. Probably the more important of these are concerned with improving the status of private secured creditors.

I have already mentioned that under present law mortgagees, pledgees, purchasers, and judgment creditors may be protected before the Federal tax lien notice has been filed. One significant

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way in which the bill improves the status of private creditors is by expanding those categories of protected persons by adding a new category—mechanic's lienors—and by substituting a broader term—holders of security interests—for mortgagees and pledgees.

Another problem under existing law which has arisen is in determining when an interest is definite and complete and, therefore, given priority over a tax lien. For this to occur, the holder of the interest must be known, must have protected his interest—such as by recording it—the property subject to the interest be in existence and described, and the amount of the interest fixed. In the case of an interest that is competing with a Federal tax lien, the competing interest loses unless it has become definite and complete before the critical date—generally, when the Federal tax lien arises, but in the case of mortgages, pledges, puchases, and judgment liens, when notice of the Federal tax lien is filed. Many current financing methods that are fully protected under local law do not meet this test at the critical times and so have no protection against Federal tax liens.

The bill also expands the categories of items which are to have a superpriority even over a filed tax lien. There are several categories which your committee thought should be given this treatment to which it is not now available.

For example, it seems unreasonable to expect retail purchasers of appliances or other property to search the appropriate records when they contemplate purchases from an apparently thriving retail store.

In addition, your committee believed that where a garageman or other repairman adds value to a piece of property, such as a damaged automobile, by repairing it and as a result increases the value of the Government's lien, he should not be deterred from doing his useful work because a notice of Federal tax lien has been filed.

Similarly, there appears to be no reason why an attorney should stop work on a case because a Federal tax lien has been filed against his client. Even though State law may give him a lien on what he gets for his client, in order to secure his fee, under present law his lien is subordinate to the Federal tax lien if he has not yet completed his services to his client in that case.

These are some examples of the situations where it was felt that changes were

needed. Accordingly, this bill adds eight categories to the securities and motor vehicle situations I described—where certain interests receive a superpriority over the Federal tax lien even if notice of the lien has been filed.

A priority status is also provided for interests arising from three types of financing agreements entered into before the tax lien filing: commercial transactions financing, real property construction or improvement financing, or obligatory disbursements.

Still further, the bill provides that whenever an interest takes priority over a Federal tax lien, then certain types of related expenses—such as interest, carrying charges, collection and enforcement costs, and costs of insuring, preserving, or repairing the property to which the interest relates—are to have the same priority as the protected interest, provided that the relevant local law provides the same protection.

Another provision of the bill requires the Internal Revenue Service to refile a notice of Federal tax lien every 6 years—reckoned from the time the lien arose—in order to preserve the priority status resulting from the first filing of notice. This has been done because it was brought to our attention that present procedures may mislead a potential lender who investigates and finds a filed notice of Federal tax lien, and who knows that the underlying tax liability—and therefore the tax lien—becomes unenforceable 6 years after assessment, but who is not aware of the fact that the 6-year statute is often extended by the taxpayer's acts or by an agreement between the taxpayer and the Internal Revenue Service.

Up to this time I have in general discussed the areas in which the bill improves the priority status of private creditors. The changes made there are substantial and are apt to have a greater impact than the rest of this bill. However, many of the other provisions are also of significance. I would particularly like to bring to your attention the following points:

First, the bill broadens the authority of the Internal Revenue Service to discharge property from the Federal tax lien, to subordinate the Federal tax lien under appropriate circumstances, and to issue certificates regarding the status of the Government's lien. This broadening of authority has the same purpose as most of the other provisions—to free business transactions from unnecessary interference and to minimize inequities.

Second, the Federal tax lien is normally enforced by levy or by foreclosure actions. A new provision permits the Government to reach a taxpayer's cash loan value by levy in certain types of insurance policies. The policies, in such cases, may as a result be continued in effect. Since present law normally requires the Government to fóreclose in order to realize anything from those policies, and since foreclosure destroys the policies, this new provision is especially important to beneficiaries of taxpayers who are no longer insurable. At the same time, from the Government's point of view, it obtains a collection tool that is quicker and less expensive to use than present law.

Third, the bill imposes reasonable obligations upon those who finance employers' payrolls, requiring them to withhold income taxes and social security taxes, as employers are now required to do.

Other provisions deal with U.S. intervention in suits, suits by third parties against the United States, redemption and sale of property by the United States, and joinder of the United States in suits affecting property subject to a Federal tax lien.

As I have previously indicated, the bill provides special provisions for persons engaged in accounts receivable or inventory financing. In many cases where such lenders are protected by State law this protection applies not only to persons lending against accounts receivable but also to those who purchase these accounts as well. Since the bill refers to purchasers separately, I want to take this opportunity to make it clear that for purposes of priority against the Federal tax lien it makes no difference which type of financing is involved. Any one financing a business by buying its receivables under an agreement to do so will be protected to the same extent as a lender who lends money against the receivables under an agreement to do so. One using the purchase method is not required to meet any higher standard in any way. I make this comment because a reference in the technical explanation of the committee report on the bill may be somewhat confusing on this point.

Mr. Chairman, when experience and changing circumstances demonstrate the need for revision of a complex set of laws—and the Federal tax lien laws are indeed complex—a proper revision often requires the willingness of peope with apparently conflicting interests to find ways of accommodating each other's point of view. In this case we have had just such cooperation from the Treasury Department and the Internal Revenue Service and from a special committee organized by the American Bar Association to bring to bear on this subject the expertise of four of its sections. With this assistance from affected parties, a bill has been produced that improves the effectiveness of the Federal tax lien and yet enables it to harmonize better with both current business practices and the interests of justice.

Mr. Chairman, H.R. 11256, the Federal Tax Lien Act of 1966, is a good bill and I urge its adoption.

Mr. GROSS. Mr. Chairman, will the gentleman yield?

Mr. MILLS. I will be glad to yield to the gentleman.

Mr. GROSS. Will the gentleman devote a minute or 2 to an explanation of the superpriority of attorneys' fees or the necessity for a new category of superpriority of attorneys' fees?

Mr. MILLS. Yes. This is one of eight superpriorities added to the two for securities and motor vehicles which are existing law. It was felt that attorneys whose efforts resulted in the obtaining or collecting of judgments or settlements, in say tort actions, should be protected as to their reasonable fees.

The CHAIRMAN. The time of the gentleman has again expired.

Mr. MILLS. Mr. Chairman, I yield myself 4 additional minutes.

Mr. GROSS. I am intrigued by this language. It says:

> The attorney's fee in such a case can be thought of as similar in concept to the repairman's charge in that it can be expected to enhance the value of the taxpayer's property.

How can the attorney's fee enhance the value of the property as a repairman does when he makes repairs to property?

Mr. MILLS. Let me go back over the

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problem again. If the Government is trying to collect some delinquent taxes from an individual and this individual may possibly collect a judgment from someone else, is it not desirable from the standpoint of the Government that he have a good attorney so he can collect the judgment? To get a good attorney would he not have to be able to pay the attorney a reasonable fee?

Mr. JENNINGS. Mr. Chairman, will the gentleman yield?

Mr. MILLS. I yield to the gentleman.

Mr. JENNINGS. Is it not true this situation is closely parallel to the situation of an automobile repairman. In the case of the attorney is it not his work which makes it possible for the client to collect the judgment, which in turn may be collected by the Government for the delinquent taxes?

Mr. MILLS. That is right. The ability of the attorney like the skill of the repairman, in no small part accounts for the value of the property held by the taxpayer which is subject to the tax lien. It is only good business for the Government that the taxpayer be able to pay a reasonable fee to his attorney.

Mr. GROSS. But having gone that far, why then do you say that "this setoff means the attorney's lien superpriority does not apply with respect to judgments he obtains for the taxpayer against the Government?"

Mr. MILLS. It is true. The offset is an exception.

Mr. GROSS. Why not go all the way and see to it that he does get his money from the Government?

Mr. MILLS. The right of offset would exist between two private parties each having claims against the other. We saw no reason for treating the Government worse in this situation, than we would a private party having a claim against the person involved.

Mr. ROGERS of Colorado. Mr. Chairman, will the gentleman yield?

Mr. MILLS. I yield to the gentleman from Colorado.

Mr. ROGERS of Colorado. I understand that the provisions of this law provide that in order for the filing of a tax lien to be effective, it must be filed according to the State law?

Mr. MILLS. That is right.

Mr. ROGERS of Colorado. And, it does not in any manner deal with the bankruptcy procedures?

Mr. MILLS. No, sir; this bill does not touch bankruptcy priorities.

Mr. ROGERS of Colorado. Mr. Chairman, if the gentleman will yield further, I know that we recently passed two pieces of legislation dealing with the effect of bankruptcy proceedings on tax liens.

Mr. MILLS. Yes; this bill does not in any way effect the action by the gentleman's committee in its recent bankruptcy legislation.

Mr. ROGERS of Colorado. We passed two different measures recently, one of them being Public Law 89-495.

Mr. MILLS. That is right.

Mr. ROGERS of Colorado. Which was introduced by the gentleman from Virginia [Mr. POFF].

Mr. MILLS. That is right.

Mr. ROGERS of Colorado. In effect, that law says that in order for a lien to have the proper priority for taxes under the bankruptcy proceedings, it must be filed—in order to create a lien—according to State law.

All you proposed to do here is really to implement that law in that respect?

Mr. MILLS. We are in this bill dealing with a taxpayer against whom the Government has a claim who is not in bankruptcy.

Mr. ROGERS of Colorado. I know, but that has led to a lot of difficulty. Up to a certain point in bankruptcy the courts have held that the priority of a tax lien is paramount and supersedes all other liens. At least that was the case when the matter came to the committee and when it came to the money being paid out by the referee or trustee in bankruptcy. In other words, Uncle Sam came in first, regardless.

The CHAIRMAN. The time of the gentleman from Arkansas has again expired.

Mr. MILLS. Mr. Chairman, I yield myself 2 additional minutes.

Mr. POFF. Mr. Chairman, will the gentleman yield?

Mr. MILLS. I yield to the gentleman from Virginia.

Mr. POFF. Mr. Chairman, I thank the gentleman from Arkansas for yielding, and I thank my colleague, the gentleman from Colorado [Mr. ROGERS], for the point which he has made.

Mr. Chairman, in order that the legislative history might be abundantly clear, let me say that I agree entirely with the comments which have been made by the gentleman from Arkansas, the chairman of the Committee on Ways and Means.

There is nothing whatever inconsistent in what the gentleman's committee has done with what the Congress did in the passing of the bill which I authored earlier this year. More than that, may I say that what the gentleman's committee has done is entirely in harmony with what was done earlier, and in some respects promotes the clarity and purpose of that earlier action.

Mr. MILLS. I thank the gentleman from Virginia [Mr. POFF].

Mr. HALL. Mr. Chairman, will the gentleman yield?

Mr. MILLS. I yield to the gentleman from Missouri.

Mr. HALL. Mr. Chairman, I have one general question of the distinguished chairman of the Committee on Ways and Means [Mr. MILLS]—one specific question.

Generally, is it the intent of this bill to make it easier for our Federal Government to recover under this new system of liens and priorities and superpriorities, including such liens on estate and gift taxes, and the release of liens and the seizure of property and so forth? Does it simply clarify and does it make it easier to recover in general for tax purposes, or does it protect the individual to a greater degree?

Mr. MILLS. The major provisions in this bill are designed to protect creditor's rights. Other provisions are designed to improve collection procedures both from the standpoint of the Government and from the standpoint of the taxpayers.

In the past 20 years many new types of commercial transactions have developed. This is the first time Congress has had the time to consider in depth the relationship of these new transactions to Federal tax liens.

One of the things we were concerned about it that there are so many innocent people who are unaware of any possibility of a tax lien. This is why we added several of the superpriorities. For instance, a retail merchant in one of the cities in the gentleman's congressional district might have had a tax lien recorded against him and that lien automatically attached to everything in his store. If you went and bought a refrigerator, you would be an innocent purchaser.

The CHAIRMAN. The time of the gentleman from Arkansas has again expired.

Mr. MILLS. Mr. Chairman, I yield myself 2 additional minutes.

The CHAIRMAN. The gentleman from Arkansas is recognized for 2 additional minutes.

Mr. MILLS. Yet under present law you could lose that refrigerator to the Government where a tax lien had been filed against the retailer. The bill overcomes this harsh result.

Mr. HALL. Mr. Chairman, if the gentleman will yield further, it renders safe the consumer who is making the purchase, without having to investigate whether there is a lien on the article or not and therefore protects the people?

Mr. MILLS. In that kind of case that is right. We are giving a superpriority in this case and also in seven other situations that do not now enjoy it. This includes the one for attorney's fees which our friend from Iowa referred to and, of course, also the one which the gentleman and I have just been discussing. Of course these superpriorities are only one feature of the bill. There are many other provisions, some of which improve creditors rights and some of which deal with other matters.

Mr. HALL. If the gentleman will yield for the specific question—and I think perhaps he has already answered it—certainly if you would read into it, without discussing it, paragraph (d) of the title "Seizure of property for collection of taxes," section 104 of the bill, and appropriate sections of the code, so that in this bill that would enable the Internal Revenue to levy or mail through the Postmaster General or any Cabinet branch of the Government. The gentleman will recall that we were instrumental and testified before this House and before the Senate committee on 34 instances in which this had been done without authority and unconstitutionally within the past 2 years, this does not enhance that authority in any manner and it does not, does it, protect the individual to any greater degree?

Mr. MILLS. No; it does not change this feature of present law. This exemption is retained.

The CHAIRMAN. The gentleman from Arkansas has consumed 23 minutes.

The Chair recognizes the gentleman from Wisconsin [Mr. BYRNES].

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Mr. BYRNES of Wisconsin. Mr. Chairman, I yield myself such time as I may require.

(Mr. BYRNES of Wisconsin asked and was given permission to revise and extend his remarks.)

Mr. BYRNES of Wisconsin. Mr. Chairman, I rise in support of H.R. 11256, a bill unanimously reported by the

Ways and Means Committee to improve the Federal tax law with respect to the priority and effect of Federal tax liens and levies. The Federal income tax was enacted over 50 years ago—in 1913—and no comprehensive program to update the tax lien provisions has been undertaken by the Congress during this period.

The law relating to liens and levies, both Federal and State, must meet the needs of a highly sophisticated economy in which complex and varied commercial transactions play an important part. During the last 50 years our economy has undergone great change and the law governing commercial transactions has necessarily responded to changing commercial practices.

The updating of State laws governing commercial transactions has received a great deal of attention in recent years. As a result, a uniform commercial code, developed by the American Law Institute and the National Conference of Commissioners on Uniform State Laws, has been adopted in over 40 States. Although Federal law governing commercial transactions must also be adapted to the new and more sophisticated legal devices serving our highly developed economy, Federal tax law relating to liens and levies has not kept pace.

The principal concern of this comprehensive bill relates to the priority of Federal tax liens. Present tax law provides a general Federal tax lien against all the taxpayer's property—presently owned or subsequently acquired—at the time the tax is assessed. The assessment occurs when the unpaid tax liability is entered on the records of the Internal Revenue Service. However, the lien is not valid against innocent purchasers and certain creditors until the Government records the lien.

Additionally, even when the Federal Government has recorded its lien, it is not valid against a mortgagee, pledgee, or purchaser of bonds, debentures, notes, negotiable instruments, money, or other securities who do not have actual knowledge of the Government's interest. Since these items function like currency, it has long been thought impractical and unjust to introduce delay and uncertainty into monetary transactions by requiring individuals to search for a Government lien. A purchaser of a motor vehicle who has obtained possession of the vehicle without any knowledge of a recorded Federal tax lien is also protected. With these exceptions, the general Federal tax lien takes priority over the interests of other members of the public.

The present rules relating to tax liens are defective in two principal respects. First, they fail to meet the needs of our citizens for certainty and convenience in the legal rules governing their commercial dealings. Second, they often produce inequity by unfairly granting priority to the Federal Government's interests over the interests of other creditors and purchasers.

The unfairness of the current rules can be seen from examples of a typical commercial transaction. Under present law, an individual answering a newspaper ad for the sale of an inexpensive second hand television will purchase the television subject to any Federal tax lien against the seller, if recorded, even though he pays a full and fair price for the television.

Under present law, an individual going into a sporting store and purchasing a bicycle for his son's birthday, will take the bike subject to the Government's recorded tax lien against the proprietor, even though he has paid full value for the bike.

A mechanic who repairs an individual's car has long been given a "mechanics lien" against the automobile for the value of his services. Despite this, if the owner of the automobile is a taxpayer against whom a general Federal tax lien has been recorded, the value of the automobile—which has been increased by the mechanic's repairs—must first be used to satisfy the Government's lien.

In these transactions, the mechanic or the purchaser cannot be expected to search public records to ascertain whether or not a general Federal tax lien has been recorded against the seller. Possession of the property clothes the seller with all the indicia of ownership. In providing that the purchaser's interest is subject to a Federal tax lien, the present law is inequitable to the individual, and also impractical in view of the large number of small transactions in personal property that our citizens engage in. The bill reported by the Ways and Means Committee amends the law to provide protection—subject to minor limitations—to the innocent purchaser in these circumstances.

These changes are typical of many of the other amendments in the bill, and indicate the general intent and purpose of the legislation. Thus, there are provisions extending protection to banks making passport loans, and insurance companies who extend loans based on the cash surrender value of insurance polices. Other provisions provide that where a creditor has extended a continuing line of credit to a merchant secured by inventory that turns over rapidly or accounts receivable that are continually changing, he will not be required to search the public records for a Federal tax lien each time money is advanced on a new accounts receivable or replacement inventory. Under the committee's bill, the creditor would only have to search the record in these circumstances once every 45 days.

The intent of these amendments as they relate to the priority of Federal liens is to promote equity and facilitate

commerce by making the legal rules governing tax liens more certain and fair.

In addition to the changes relating to the priority of the Federal tax lien, the bill makes many other changes in the rules governing the seizure of property for the collection of tax, the release of liens, and other matters generally related to the collection by the Government of delinquent tax liabilities. The changes are intended to make collection procedures more equitable and more convenient to taxpayers, the Government, and the general public.

Mr. Chairman, this legislation reflects the joint efforts of the American Bar Association, the Treasury Department, and the staff of the Joint Committee on Internal Revenue Taxation, and they are all to be commended for the work they have done on this legislation. The Ways and Means Committee and the Congress is indebted to them for their efforts. This bill represents a constructive attempt to deal with many of the difficult problems in the field of tax liens and levies, and I recommend that it be passed by the House.

The CHAIRMAN. Under the rule, the bill is considered as having been read for amendment and it shall be in order to consider the amendment in the nature of a substitute, now in the bill. No amendments are in order to the bill or the committee substitute except amendments offered by direction of the Committee on Ways and Means and such amendments shall not be subject to amendment.

The Clerk will read the committee amendment.

The Clerk read as follows:

Strike out all after the enacting clause and insert:

"Section 1. Short Title, Etc.

"(a) Short Title.—This Act may be cited as the 'Federal Tax Lien Act of 1966'.

"(b) Amendment of 1954 Code.—Except as other wise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

"TITLE I—PRIORITY AND EFFECT OF TAX LIENS AND LEVIES

"Sec. 101. Priority of Liens.

"(a) Amendment of Section 6323.—Section 6323 (relating to validity of tax liens against mortgagees, pledgees, purchasers, and judgment creditors) is amended to read as follows:

"'Sec. 6323. Validity and Priority Against Certain Persons.

"'(a) Purchasers, Holders of Security Interests, Mechanic's Lienors, and Judgment Lien Creditors.—The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary or his delegate.

"'(b) Protection for Certain Interests Even Though Notice Filed.—Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid—

"'(1) Securities.—With respect to a security (as defined in subsection (h)(4))—

"'(A) as against a purchaser of such security who at the time of purchase did not have actual notice or knowledge of the existence of such lien; and

"'(B) as against a holder of a security interest in such security who, at the time such interest came into existence, did not have actual notice or knowledge of the existence of such lien.

"'(2) Motor vehicles.—With respect to a motor vehicle (as defined in subsection (h)(3)), as against a purchaser of such motor vehicle, if—

"'(A) at the time of the purchase such purchaser did not have actual notice or knowledge of the existence of such lien, and

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"'(B) before the purchaser obtains such notice or knowledge, he has acquired possession of such motor vehicle and has not thereafter relinquished possession of such motor vehicle to the seller or his agent.

"'(3) Personal property purchased at retail.—With respect to tangible personal property purchased at retail, as against a purchaser in the ordinary course of the seller's trade or business, unless at the time of such purchase such purchaser intends such purchase to (or knows such purchase will) hinder, evade, or defeat the collection of any tax under this title.

"'(4) Personal property purchased in casual sale.—With respect to household goods, personal effects, or other tangible personal property described in section 6334(a) purchased (not for resale) in a casual sale for less than $250, as against the purchaser, but only if such purchaser does not have actual notice or knowledge (A) of the existence of such lien, or (B) that this sale is one of a series of sales.

"'(5) Personal property subject to possessory lien.—With respect to tangible personal property subject to a lien under local law securing the reasonable price of the repair or improvement of such property, as against a holder of such a lien, if such holder is, and has been, continuously in possession of such property from the time such lien arose.

"'(6) Real property tax and special assessment liens.—With respect to real property, as against a holder of a lien upon such property, if such lien is entitled under local law to priority over security interests in such property which are prior in time, and such lien secures payment of—

"'(A) a tax of general application levied by any taxing authority based upon the value of such property;

"'(B) a special assessment imposed directly upon such property by any taxing authority, if such assessment is imposed for the purpose of defraying the cost of any public improvement; or

"'(C) charges for utilities or public services furnished to such property by the United States, a State or political subdivision thereof, or an instrumentality of any one or more of the foregoing.

"'(7) Residential property subject to a mechanic's lien for certain repairs and improvements.—With respect to real property subject to a lien for repair or improvement

of a personal residence (containing not more than four dwelling units) occupied by the owner of such residence, as against a mechanic's lienor, but only if the contract price on the contract with the owner is not more than $1,000.

" '(8) Attorneys' liens.—With respect to a judgment or other amount in settlement of a claim or of a cause of action, as against an attorney who, under local law, holds a lien upon or a contract enforcible against such judgment or amount, to the extent of his reasonable compensation for obtaining such judgment or procuring such settlement, except that this paragraph shall not apply to any judgment or amount in settlement of a claim or of a cause of action against the United States to the extent that the United States offsets such judgment or amount against any liability of the taxpayer to the United States.

" '(9) Certain insurance contracts.—With respect to a life insurance, endowment, or annuity contract, as against the organization which is the insurer under such contract, at any time—

" '(A) before such organization had actual notice or knowledge of the existence of such lien;

" '(B) after such organization had such notice or knowledge, with respect to advances required to be made automatically to maintain such contract in force under an agreement entered into before such organization had such notice or knowledge; or

" '(C) after satisfaction of a levy pursuant to section 6332(b), unless and until the Secretary or his delegate delivers to such organization a notice, executed after the date of such satisfaction, of the existence of such lien.

" '(10) Passbook loans.—With respect to a savings deposit, share, or other account, evidenced by a passbook, with an institution described in section 581 or 591, to the extent of any loan made by such institution without actual notice or knowledge of the existence of such lien, as against such institution, if such loan is secured by such account and if such institution has been continuously in possession of such passbook from the time the loan is made.

" '(c) Protection for Certain Commercial Transactions Financing Agreements, etc.—

" '(1) In general.—To the extent provided in this subsection, even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing but which—

" '(A) is in qualified property covered by the terms of a written agreement entered into before tax lien filing and constituting—

" '(i) a commercial transactions financing agreement,

" '(ii) a real property construction or improvement financing agreement, or

" '(iii) an obligatory disbursement agreement, and

" '(B) is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

" '(2) Commercial transactions financing agreement.—For purposes of this subsection—

" '(A) Definition.—The term "commercial transactions financing agreement" means an agreement (entered into by a person in the course of his trade or business)—

" '(i) to make loans to the taxpayer to be secured by commercial financing security acquired by the taxpayer in the ordinary course of his trade or business, or

" '(ii) to purchase commercial financing security (other than inventory) acquired by the taxpayer in the ordinary course of his trade or business;

but such an agreement shall be treated as coming within the term only to the extent that such loan or purchase is made before the 46th day after the date of tax lien filing or (if earlier) before the lender or purchaser had actual notice or knowledge of such tax lien filing.

" '(B) Limitation on qualified property.—The term "qualified property", when used with respect to a commercial transactions financing agreement, includes only commercial financing security acquired by the taxpayer before the 46th day after the date of tax lien filing.

" '(C) Commercial financing security defined.—The term "commercial financing security" means (i) paper of a kind ordinarily arising in commercial transactions, (ii) accounts receivable, (iii) mortgages on real property, and (iv) inventory.

" '(D) Purchaser treated as acquiring security interest.—A person who satisfies subparagraph (A) by reason of clause (ii) thereof shall be treated as having acquired a security interest in commercial financing security.

" '(3) Real property construction or improvement financing agreement.—For purposes of this subsection—

" '(A) Definition.—The term "real property construction or improvement financing agreement" means an agreement to make cash disbursements to finance—

" '(i) the construction or improvement of real property,

" '(ii) a contract to construct or improve real property, or

" '(iii) the raising or harvesting of a farm crop or the raising of livestock or other animals.

For purposes of clause (iii), the furnishing of goods and services shall be treated, as the disbursement of cash.

" '(B) Limitation on qualified property.—The term "qualified property", when used with respect to a real property construction or improvement financing agreement, includes only—

" '(i) in the case of subparagraph (A)(i), the real property with respect to which the construction or improvement has been or is to be made,

" '(ii) in the case of subparagraph (A)(ii), the proceeds of the contract described therein, and

" '(iii) in the case of subparagraph (A)(iii), property subject to the lien imposed by section 6321 at the time of tax lien filing and the crop or the livestock or other animals referred to in subparagraph (A)(iii).

" '(4) Obligatory disbursement agreement.—For purposes of this subsection—

" '(A) Definition.—The term "obligatory disbursement agreement" means an agreement (entered into by a person in the course of his trade or business) to make disbursements, but such an agreement shall be treated as coming within the term only to the extent of disbursements which are required to be made by reason of the intervention of the rights of a person other than the taxpayer.

" '(B) Limitation on qualified property.—The term "qualified property", when used with despect to an obligatory disbursement

agreement, means property subject to the lien imposed by section 6321 at the time of tax lien filing and (to the extent that the acquisition is directly traceable to the disbursements referred to in subparagraph (A)) property acquired by the taxpayer after tax lien filing.

"'(C) SPECIAL RULES FOR SURETY AGREEMENTS.—Where the obligatory disbursement agreement is an agreement ensuring the performance of a contract between the taxpayer and another person—

"'(i) the term "qualified property" shall be treated as also including the proceeds of the contract the performance of which was ensured, and

"'(ii) if the contract the performance of which was ensured was a contract to construct or improve real property, to produce goods, or to furnish services, the term "qualified property" shall be treated as also including any tangible personnel property used by the taxpayer in the performance of such ensured contract.

"'(d) 45-DAY PERIOD FOR MAKING DISBURSEMENTS.—Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing by reason of disbursements made before the 46th day after the date of tax lien filing, or (if earlier) before the person making such disbursements had actual notice or knowledge of tax lien filing, but only if such security interest—

"'(1) is in property (A) subject, at the time of tax lien filing, to the lien imposed by section 6321, and (B) covered by the terms of a written agreement entered into before tax lien filing, and

"'(2) is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

"'(e) PRIORITY OF INTEREST AND EXPENSES.—If the lien imposed by section 6321 is not valid as against a lien or security interest, the priority of such lien or security interest shall extend to—

"'(1) any interest or carrying charges upon the obligation secured,

"'(2) the reasonable charges and expenses of an indenture trustee or agent holding the security interest for the benefit of the holder of the security interest,

"'(3) the reasonable expenses, including reasonable compensation for attorneys, ac-

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tually incurred in collecting or enforcing the obligation secured,

"'(4) the reasonable costs of insuring, preserving, or repairing the property to which the lien or security interest relates,

"'(5) the reasonable costs of insuring payment of the obligation secured, and

"'(6) amounts paid to satisfy any lien on the property to which the lien or security interest relates, but only if the lien so satisfied is entitled to proirity over the lien imposed by section 6321,

to the extent that, under local law, any such item has the same priority as the lien or security interest to which it relates.

"'(f) PLACE FOR FILING NOTICE; FORM.—The notice referred to in subsection (a) shall be filed—

"'(1) UNDER STATE LAWS.—In the office designated by the law of the State in which the property subject to the lien is situated, whenever the State has by law designated an office within the State for the filing of such notice; or

"'(2) WITH CLERK OF DISTRICT COURT.—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State has not by law designated an office within the State for the filing of such notice; or

"'(3) WITHIN RECORDER OF DEEDS OF THE DISTRICT OF COLUMBIA.—In the office of the Recorder of Deeds of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

If the notice filed pursuant to paragraph (1) is in such form as would be valid if filed with the clerk of the United States district court pursuant to paragraph (2), such notice shall be valid notwithstanding any law of the State regarding the form or content of a notice of lien.

"'(g) REFILING OF NOTICE.—

"'(1) IN GENERAL.—For purposes of this section, unless notice of lien is refiled (in the office in which the prior notice was filed) during the required refiling period, such notice of lien shall be treated as filed on the date on which it is filed (in accordance with subsection (f)) after the expiration of such filing period.

"'(2) REQUIRED REFILING PERIOD.—In the case of any notice of lien, the term "required refiling period" means—

"'(A) the one-year period ending 30-days after the expiration of 6 years after the date of the assessment of the tax, and

"'(B) the one-year period ending with the expiration of 6 years after the close of the preceding required refiling period for such notice of lien.

"'(3) TRANSITIONAL RULE.—Notwithstanding paragraph (2), if the assessment of the tax was made before January 1, 1962, the first required refiling period shall be the calendar year 1967.

"'(h) DEFINITIONS.—For purposes of this section and section 6324—

"'(1) SECURITY INTEREST.—The term "security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time (A) if, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien arising out of an unsecured obligation, and (B) to the extent that, at such time, the holder has parted with money or money's worth.

"'(2) MECHANIC'S LIENOR.—The term "mechanic's lienor" means any person who under local law has a lien on real property (or on the proceeds of a contract relating to real property) for services, labor, or materials furnished in connection with the construction or improvement of such property. For purposes of the preceding sentence, a person has a lien on the earliest date such lien becomes valid under local law against subsequent purchasers without actual notice, but not before he begins to furnish the services, labor, or materials.

"'(3) MOTOR VEHICLE.—The term "motor vehicle" means a self-propelled vehicle which is registered for highway use under the laws of any State or foreign country.

"'(4) SECURITY.—The term "security" means any bond, debenture, note, or certificate or other evidence of indebtedness, issed by a corporation or a government or po-

litical subdivision thereof, with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

"'(5) TAX LIEN FILING.—The term 'tax lien filing' means the filing of notice (referred to in subsection (a)) of the lien imposed by section 6321.

"'(6) PURCHASER.—The term "purchaser" means a person who, for adequate and full consideration in money or money's worth, acquires an interest (other than a lien or security interest) in property which is valid under local law against subsequent purchasers without actual notice. In applying the preceding sentence for purposes of subsection (a) of this section, and for purposes of section 6324—

"'(A) a lease of property,

"'(B) a written executory contract to purchase or lease property,

"'(C) an option to purchase or lease property or any interest therein, or

"'(D) an option to renew or extend a lease of property,

which is not a lien or security interest shall be treated as an interest in property.

"'(i) SPECIAL RULES.—

"'(1) ACTUAL NOTICE OR KNOWLEDGE.—For purposes of this subchapter, an organization shall be deemed for purposes of a particular transaction to have actual notice or knowledge of any fact from the time such fact is brought to the attention of the individual conducting such transaction, and in any event from the time such fact would have been brought to such individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

"'(2) SUBROGATION.—Where, under local law, one person is subrogated to the rights of another with respect to a lien or interest, such person shall be subrogated to such rights for purposes of any lien imposed by section 6321 or 6324.

"'(3) DISCLOSURE OF AMOUNT OF OUTSTANDING LIEN.—If a notice of lien has been filed pursuant to subsection (f), the Secretary or his delegate is authorized to provide by regulations the extent to which, and the conditions under which, information as to the amount of the outstanding obligation secured by the lien may be disclosed.'

"(b) CLERICAL AMENDMENTS.—

"(1) The table of sections for subchapter C of chapter 64 is amended by striking out

"'Sec. 6323. Validity against mortgagees, pledgees, purchasers, and judgment creditors.'

and inserting in lieu thereof

"'Sec. 6323. Validity and priority against certain persons.'

"(2) Section 545(b)(9) is amended by striking out 'section 6323(a) (1), (2), or (3)' and inserting in lieu thereof 'section 6323(f)'.

"SEC. 102. SPECIAL LIENS FOR ESTATE AND GIFT TAXES.

"Section 6324 (relating to special liens for estate and gift taxes) is amended to read as follows:

"'SEC. 6324. SPECIAL LIENS FOR ESTATE AND GIFT TAXES.

"'(a) LIENS FOR ESTATE TAX.—Except as otherwise provided in subsection (c)—

"'(1) UPON GROSS ESTATE.—Unless the estate tax imposed by chapter 11 is sooner paid in full, or becomes unenforceable by reason of lapse of time, it shall be a lien upon the gross estate of the decedent for 10 years from the date of death, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien.

"'(2) LIABILITY OF TRANSFEREES AND OTHERS.—If the estate tax imposed by chapter 11 is not paid when due, then the spouse, transferee, trustee (except the trustee of an employees' trust which meets the requirements of section 401(a)), surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042, inclusive, to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax. Any part of such property transferred by (or transferred by a transferee of) such spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary, to a purchaser or holder of a security interest shall be divested of the lien provided in paragraph (1) and a like lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary, or transferee of any such person, except any part transferred to a purchaser or a holder of a security interest.

"'(3) CONTINUANCE AFTER DISCHARGE OF EXECUTOR.—The provisions of section 2204 (relating to discharge of executor from personal liability) shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless such part of the gross estate (or any interest therein) has been transferred to a purchaser or a holder of a security interest, in which case such part (or such interest) shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser or holder of a security interest, by the heirs, legatees, devisees, or distributees.

"'(b) LIEN FOR GIFT TAX.—Except as otherwise provided in subsection (c), unless the gift tax imposed by chapter 12 is sooner paid in full or becomes unenforceable by reason of lapse of time, such tax shall be a lien upon all gifts made during the calendar year, for 10 years from the date the gifts are made. If the tax is not paid when due, the donee of any gift shall be personally liable for such tax to the extent of the value of such gift. Any part of the property comprised in the gift transferred by the donee (or by a transferee of the donee) to a purchaser or holder of a security interest shall be divested of the lien imposed by this subsection and such lien, to the extent of the value of such gift, shall attach to all the property (including

after-acquired property) of the donee (or the transferee) except any part transferred to a purchaser or holder of a security interest.

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"'EXCEPTIONS.—

"'(1) The lien imposed by subsection (a) or (b) shall not be valid as against a mechanic's lienor and, subject to the conditions provided by section 6323(b) (relating to protection for certain interests even though notice filed), shall not be valid with respect to any lien or interest described in section 6323(b).

"'(2) If a lien imposed by subsection (a) or (b) is not valid as against a lien or security interest, the priority of such lien or security interest shall extend to any item described in section 6323(e) (relating to priority of interest and expenses) to the extent that, under local law, such item has the same priority as the lien or security interest to which it relates.'

"SEC. 103. CERTIFICATES RELATING TO LIENS.

"(a) AMENDMENT OF SECTION 6325.—Section 6325 (relating to release of lien or partial discharge of property) is amended to read as follows:

"'SEC. 6325. RELEASE OF LIEN OR DISCHARGE OF PROPERTY.

"'(a) RELEASE OF LIEN.—Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of release of any lien imposed with respect to any internal revenue tax if—

"'(1) LIABILITY SATISFIED OR UNENFORCEABLE.—The Secretary or his delegate finds that the liability for the amount assessed, together with all interest in respect thereof, has been fully satisfied or has become legally unenforceable; or

"'(2) BOND ACCEPTED.—There is furnished to the Secretary or his delegate and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified by such regulations.

"'(b) DISCHARGE OF PROPERTY.—

"'(1) PROPERTY DOUBLE THE AMOUNT OF THE LIABILITY.—Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to any lien imposed under this chapter if the Secretary or his delegate finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the unsatisfied liability secured by such lien and the amount of all other liens upon such property which have priority over such lien.

"'(2) PART PAYMENT; INTEREST OF UNITED STATES VALUELESS.—Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to the lien if—

"'(A) there is paid over to the Secretary or his delegate in partial satisfaction of the liability secured by the lien an amount determined by the Secretary or his delegate, which shall not be less than the value, as determined by the Secretary or his delegate, of the interest of the United States in the part to be so discharged, or

"'(B) the Secretary or his delegate determines at any time that the interest of the United States in the part to be so discharged has no value.

In determining the value of the interest of the United Statse in the part to be so discharged, the Secretary or his delegate shall give consideration to the value of such part and to such liens thereon as have priority over the lien of the United States.

"'(3) SUBSTITUTION OF PROCEEDS OF SALE.—Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to the lien if such part of the property is sold and, pursuant to an agreement with the Secretary or his delegate, the proceeds of such sale are to be held, as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as such liens and claims had with respect to the discharged property.

"'(c) ESTATE OR GIFT TAX.—Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any or all of the property subject to any lien imposed by section 6324 if the Secretary or his delegate finds that the liability secured by such lien has been fully satisfied or provided for.

"'(d) SUBORDINATION OF LIEN.—Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of subordination of any lien imposed by this chapter upon any part of the property subject to such lien if—

"'(1) there is paid over to the Secretary or his delegate an amount equal to the amount of the lien or interest to which the certificate subordinates the lien of the United States, or

"'(2) the Secretary or his delegate believes that the amount realizable by the United States from the property to which the certificate relates, or from any other property subject to the lien, will ultimately be increased by reason of the issuance of such certificate and that the ultimate collection of the tax liability will be facilitated by such subordination.

"'(e) NONATTACHMENT OF LIEN.—If the Secretary or his delegate determines that, because of confusion of names or otherwise, any person (other than the person against whom the tax was assessed) is or may be injured by the appearance that a notice of lien filed under section 6323 refers to such person, the Secretary or his delegate may issue a certificate that the lien does not attach to the property of such person.

"'(f) EFFECT OF CERTIFICATE.—

"'(1) CONCLUSIVENESS.—Except as provided in paragraphs (2) and (3), if a certificate is issued pursuant to this section by the Secretary or his delegate and is filed in the same office as the notice of lien to which it relates (if such notice of lien has been filed) such certificate shall have the following effect:

"'(A) in the case of a certificate of release, such certificate shall be conclusive that the lien referred to in such certificate is extinguished;

"'(B) in the case of a certificate of discharge, such certificate shall be conclusive that the property covered by such certificate is discharged from the lien;

"'(C) in the case of a certificate of subordination, such certificate shall be conclusive that the lien or interest to which the lien of the United States is subordinated is superior to the lien of the United States; and

"'(D) in the case of a certificate of nonattachment, such certificate shall be conclusive that the lien of the United States does not attach to the property of the person referred to in such certificate.

"'(2) REVOCATION OF CERTIFICATE OF RELEASE OR NONATTACHMENT.—If the Secretary or his delegate determines that a certificate of release or nonattachment of a lien imposed by section 6321 was issued erroneously or improvidently, or if a certificate of release of such lien was issued pursuant to a collateral agreement entered into in connection with a compromise under section 7122 which has been breached, and if the period of limitation on collection after assessment has not expired, the Secretary or his delegate may revoke such certificate and reinstate the lien—

"'(A) by mailing notice of such revocation to the person against whom the tax was assessed at his last known address, and

"'(B) by filing notice of such revocation in the same office in which the notice of lien to which it relates was filed (if such notice of lien had been filed).

Such reinstated lien (i) shall be effective on the date notice of revocation is mailed to the taxpayer in accordance with the provisions of subparagraph (A), but not earlier than the date on which any required filing of notice of revocation is filed in accordance with the provisions of subparagraph (B), and (ii) shall have the same force and effect (as of such date), until the expiration of the period of limitation on collection after assessment, as a lien imposed by section 6321 (relating to lien for taxes).

"'(3) CERTIFICATES VOID UNDER CERTAIN CONDITIONS.—Notwithstanding any other provision of this subtitle, any lien imposed by this chapter shall attach to any property with respect to which a certificate of discharge has been issued if the person liable for the tax reacquires such property after such certificate has been issued.

"'(g) FILING OF CERTIFICATES AND NOTICES.—If a certificate or notice issued pursuant to this section may not be filed in the office designated by State law in which the notice of lien imposed by section 6321 is filed, such certificate or notice shall be effective if filed in the office of the clerk of the United States district court for the judicial district in which such office is situated.

"'(h) CROSS REFERENCE.—

"'For provisions relating to bonds, see chapter 73 (sec. 7101 and following).'

"(b) CLERICAL AMENDMENT.—The table of sections for subchapter C of chapter 64 is amended by striking out

"'Sec. 6325. Release of lien or partial discharge of property.'

and inserting in lieu thereof

"'Sec. 6325. Release of lien or discharge of property.'

"SEC. 104. SEIZURE OF PROPERTY FOR COLLECTION OF TAXES.

"(a) EFFECT OF LEVY.—Section 6331(b) (relating to seizure and sale of property by levy and distraint) is amended by inserting after the first sentence the following new sentence: 'A levy shall extend only to property possessed and obligations existing at the time thereof.'

"(b) SURRENDER OF PROPERTY SUBJECT TO LEVY.—Section 6332 (relating to surrender of property subject to levy) is amended—

"(1) by striking out 'Any person' in subsection (a) and inserting in lieu thereof 'Except as otherwise provided in subsection (b), any person';

"(2) by amending subsection (b) to read as follows:

"'(b) SPECIAL RULE FOR LIFE INSURANCE AND ENDOWMENT CONTRACTS.—

"'(1) IN GENERAL.—A levy on an organization with respect to a life insurance or endowment contract issued by such organization shall, without necessity for the surrender of the contract document, constitute a demand by the Secretary or his delegate for payment of the amount described in paragraph (2) and the exercise of the right of the person against whom the tax is assessed to the advance of such amount. Such organization shall pay over such amount 90 days after service of notice of levy. Such notice shall include a certification by the Secretary or his delegate that a copy of such notice has been mailed to the person against whom the tax is assessed at his last known address.

"'(2) SATISFACTION OF LEVY.—Such levy shall be deemed to be satisfied if such organization pays over to the Secretary or his delegate the amount which the person against whom the tax is assessed could have had advanced to him by such organization

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on the date prescribed in paragraph (1) for the satisfaction of such levy, increased by the amount of any advance (including contractual interest thereon) made to such person on or after the date such organization had actual notice or knowledge (within the meaning of section 6323(i)(1)) of the existence of the lien with respect to which such levy is made, other than an advance (including contractual interest thereon) made automatically to maintain such contract in force under an agreement entered into before such organization had such notice or knowledge.

"'(3) ENFORCEMENT PROCEEDINGS.—The satisfaction of a levy under paragraph (2) shall be without prejudice to any civil action for the enforcement of any lien imposed by this title wtih respect to such contract.';

"(3) by redesignating subsection (c) as subsection (e); and

"(4) by inserting after subsection (b) the following new subsections:

"'(c) ENFORCEMENT OF LEVY.—

"'(1) EXTENT OF PERSONAL LIABILITY.—Any person who fails or refuses to surrender any property or rights to property, subject to levy, upon demand by the Secretary or his delegate, shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of taxes for the collection of which such levy has been made, together with costs and interest on such sum at the rate of 6 percent per annum from the date of such levy. Any amount (other than costs) recovered under this paragraph shall be credited against the tax liability for the collection of which such levy was made.

"'(2) PENALTY FOR VIOLATION.—In addition to the personal liability imposed by paragraph (1), if any person required to surrender property or rights to property fails or refuses to surrender such property or

rights to property without reasonable cause, such person shall be liable for a penalty equal to 50 percent of the amount recoverable under paragraph (1). No part of such penalty shall be credited against the tax liability for the collection of which such levy was made.

"'(d) EFFECT OF HONORING LEVY.—Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the Secretary or his delegate, surrenders such property or rights to property (or discharges such oligation) to the Secretary or his delegate (or who pays a liability under subsection (c)(1)) shall be discharged from any obligation or liability to the delinquent taxpayer with respect to such property or rights to property arising from such surrender or payment. In the case of a levy which is satisfied pursuant to subsection (b), such organization shall also be discharged from any obligation or liability to any beneficiary arising from such surender or payment.'

"(c) PROPERTY EXEMPT FROM LEVY.—Section 6334 (a) (relating to enumeration of property exempt from levy) is amended—

"(1) by striking out 'or Territory' in paragraph (4); and

"(2) by adding at the end thereof the following new paragraphs:

"'(6) CERTAIN ANNUITY AND PENSION PAYMENTS.—Annuity or pension payments under the Railroad Retirement Act, benefits under the Roalroad Unemployment Insurance Act, special pension payment received by a person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor roll (38 U.S.C. 562), and annuities based on retired or retainer pay under chapter 73 of title 10 of the United States Code.

"'(7) WORKMEN'S COMPENSATION.—Any amount payable to an individual as workmen's compensation (including any portion thereof payable with respect to dependents) under a workmen's compensation law of the United States, any State, the District of Columbia, or the Commonwealth of Puerto Rico.'

"(d) PUBLICATION OF NOTICE OF SALE.—The first sentence of section 6335(b) (relating to notice of sale of seized property) is amended to read as follows: 'The Secretary or his delegate shall as soon as practicable after the seizure of the property give notice to the owner, in the manner prescribed in subsection (a), and shall cause a notification to be published in some newspaper published or generally circulated within the county wherein such seizure is made, or, if there be no newspaper published or generally circulated in such county, shall post such notice at the post office nearest the place where the seizure is made, and in not less than two other public places.

"(e) REDEMPTION PERIOD.—Paragraph (1) of section 6337(b) (relating to period of redemption of real estate after sale) is amended by striking out '1 year' and inserting in lieu thereof '120 days'.

"(f) PREPARATION OF DEED.—Section 6338(c) (relating to real property purchased by United States) is amended to read as follows:

"'(c) REAL PROPERTY PURCHASED BY UNITED STATES.—If real property is declared purchased by the United States at a sale pursuant to section 6335, the Secretary or his delegate shall at the proper time execute a deed therefor, and without delay cause such deed to be duly recorded in the proper registry of deeds.'

"(g) DISCHARGE OF JUNIOR ENCUMBRANCES.—Section 6339 (relating to legal effect of certificate of sale of personal property and deed of real property) is amended by adding at the end thereof the following new subsections:

"'EFFECT OF JUNIOR ENCUMBRANCES.—A certificate of sale of personal property given or a deed to real property executed pursuant to section 6338 shall discharge such property from all liens, encumbrances, and titles over which the lien of the United States with respect to which the levy was made had priority.

"'(d) CROSS REFERENCES.—

"'(1) For distribution of surplus proceeds, see section 6342(b).

"'(2) For judicial procedure with respect to surplus proceeds, see section 7426(a)(2).'

"(h) APPLICATION OF PROCEEDS OF LEVY AND SALE.—Subsection (a) of section 6342 (relating to collection of liability) is amended—

"(1) by striking out so much thereof as precedes paragraph (1) and inserting in lieu thereof

"'(a) COLLECTION OF LIABILITY.—Any money realized by proceedings under this subchapter (whether by seizure, by surrender under section 6332 (except pursuant to subsection (c)(2) thereof), or by sale of seized property) or by sale of property redeemed by the United States (if the interest of the United States in such property was a lien arising under the provisions of this title) shall be applied as follows:';

"(2) by striking out 'under this subchapter' in paragraph (1); and

"(3) by adding 'or the sale was conducted' after 'levy was made' in paragraph (3).

"(i) RETURN OF PROPERTY.—Section 6343 (relating to authority to release levy) is amended—

"(1) by striking out the heading of such section and inserting in lieu thereof the following:

"'SEC. 6343. AUTHORITY TO RELEASE LEVY AND RETURN PREPERTY.';

"(2) by striking out 'It shall be' and inserting in lieu thereof '(a) RELEASE OF LEVY.—It shall be'; and

"(3) by adding at the end thereof the following new subsection:

"'(b) RETURN OF PROPERTY.—If the Secretary or his delegate determines that property has been wrongfully levied upon, it shall be lawful for the Secretary or his delegate to return—

"'(1) the specific property levied upon,

"'(2) an amount of money equal to the amount of money levied upon, or

"'(3) an amount of money equal to the amount of money received by the United States from a sale of such property.

Property may be returned at any time. An amount equal to the amount of money levied upon or received from such sale may be returned at any time before the expiration of 9 months from the date of such levy. For purposes of paragraph (3), if property is declared purchased by the United States at a sale pursuant to section 6335(e) (relating to manner and conditions of sale), the United States shall be treated as having received an amount of money equal to the minimum price determined pursuant to such section or (if larger) the amount received by

the United States from the resale of such property.'

"(j) CLERICAL AMENDMENT.—The table of sections for subchapter D of chapter 64 is amended by striking out—

"'Sec. 6343. Authority to release levy.'

and inserting in lieu thereof

"'Sec. 6343. Authority to release levy and return property.'

"SEC. 105. LIABILITY FOR WITHHELD TAXES.

"(a) EFFECT ON THIRD PARTIES.—Chapter 25 (relating to general provisions relating to employment taxes) is amended by adding at the end thereof the following new section:

"'SEC. 3505. LIABILITY OF THIRD PARTIES PAYING OR PROVIDING FOR WAGES.

"'(a) DIRECT PAYMENT BY THIRD PARTIES.—For purposes of sections 3102, 3202, 3402, and 3403, if a lender, surety, or other person, who is not an employer under such sections with respect to an employee or group of employees, pays wages directly to such an employee or group of employees, employed by one or more employers, or to an agent on behalf of such employee or employees, such lender, surety, or other person shall be liable in his own person and estate to the United States in a sum equal to the taxes (together with interest) required to be deducted and withheld from such wages by such employer.

"'(b) PERSONAL LIABILITY WHERE FUNDS ARE SUPPLIED.—If a lender, surety, or other person supplies funds to or for the account of an employer for the specific purpose of paying wages of the employees of such employer, with actual notice or knowledge (within the meaning of section 6323(i)(1)) that such employer does not intend to or will not be able to make timely payment or deposit of the amounts of tax required by this subtitle to be deducted and withheld by such employer from such wages, such lender, surety, or other person shall be liable in his own person and estate to the United States in a sum equal to the taxes (together with interest) which are not paid over to the United States by such employer with respect to such wages. However, the liability of such lender, surety, or other person shall be limited to an amount equal to 25 percent of the amount so supplied to or for the account of such employer for such purpose.

"'(c) EFFECT OF PAYMENT.—Any amounts paid to the United States pursuant to this section shall be credited against the liability of the employer.'

"(b) PERFORMANCE BONDS OF CONTRACTORS FOR PUBLIC BUILDINGS OR WORKS.—The first section of the Act entitled 'An Act requiring contracts for the construction, alteration, and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by an additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said public buildings or public work', approved August 24, 1935 (49 Stat.

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793; 40 U.S.C. 270a), is amended by adding at the end thereof the following new subsection:

"'(d) Every performance bond required under this section shall specifically provide coverage for taxes imposed by the United States which are collected, deducted, or withheld from wages paid by the contractor in carrying out the contract with respect to which such bond is furnished. However, the United States shall give the surety or sureties on such bond written notice, with respect to any such unpaid taxes attributable to any period, within ninety days after the date when such contractor files a return for such period, except that no such notice shall be given more than one hundred and eighty days from the date when a return for the period was required to be filed under the Internal Revenue Code of 1954. No suit on such bond for such taxes shall be commenced by the United States unless notice is given as provided in the preceding sentence, and no such suit shall be commenced after the expiration of one year after the day on which such notice is given.'

"(c) CLERICAL AMENDMENT.—The table of sections for chapter 25 is amended by adding at the end thereof of the following:

"'Sec. 3505. Liability of third parties paying or providing for wages.'

"SEC. 106. SUSPENSION OF RUNNING OF PERIOD OF LIMITATION.

"(a) ASSETS OF ESTATE OF DECEDENT OR INCOMPETENT.—Section 6503(b) (relating to assets of taxpayer in control or custody of court) is amended by striking out '(other than the estate of a decedent or of an incompetent)' and 'or Territory'.

"(b) COLLECTION HINDERED BY ABSENCE OF TAXPAYER.—Section 6503(c) (relating to location of property outside the United States or removal of property from the United States) is amended to read as follows:

"'(c) TAXPAYER OUTSIDE UNITED STATES.—The running of the period of limitations on collection after assessment prescribed in section 6502 shall be suspended for the period during which the taxpayer is outside the United States if such period of absence is for a continuous period of at least 6 months. If the preceding sentence applies and at the time of the taxpayer's return to the United States the period of limitations on collection after assessment prescribed in section 6502 would expire before the expiration of 6 months from the date of his return, such period shall not expire before the expiration of such 6 months.'

"(c) WRONGFUL SEIZURE OF PROPERTY OF THIRD PARTIES.—Section 6503 (relating to suspension of running of period of limitation) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"'(g) WRONGFUL SEIZURE OF PROPERTY OF THIRD PARTY.—The running of the period of limitations on collection after assessment prescribed in section 6502 shall be suspended for a period equal to the period from the date property (including money) of a third party is wrongfully seized or received by the Secretary or his delegate to the date the Secretary or his delegate returns property pursuant to section 6343(b) or the date on which a judgment secured pursuant to section 7426 with respect to such property becomes final, and for 30 days thereafter. The running of the period of limitations on collection after assessment shall be suspended under this subsection only with respect to the amount of such assessment equal to the amount of money or the value of specific property returned.'

"SEC. 107. PROCEEDINGS WHERE UNITED STATES HAS TITLE TO PROPERTY.

"(a) ACTION TO QUIET TITLE.—Section 7402 (relating to jurisdiction of district courts) is amended by redesignating subsection (e)

as subsection (f) and by inserting after subsection (d) the following new subsection:

"'(e) TO QUIET TITLE.—The United States district courts shall have jurisdiction of any action brought by the United States to quiet title to property if the title claimed by the United States to such property was derived from enforcement of a lien under this title.'

"(b) SALE BIDS.—Section 7403(c) (relating to adjudication and decree) is amended by adding at the end thereof the following new sentence: 'If the property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of such lien with expenses of sale, as the Secretary or his delegate directs.'

"SEC. 108. INTERVENTION BY UNITED STATES.

"Section 7424 (relating to civil action to clear title to property) is amended to read as follows:

"SEC. 7424. INTERVENTION.

"'If the United States is not a party to a civil action or suit, the United States may intervene in such action or suit to assert any lien arising under this title on the property which is the subject of such action or suit. The provisions of section 2410 of title 28 of the United States Code (except subsection (b)) and of section 1444 of title 28 of the United States Code shall apply in any case in which the United States intervenes as if the United States had originally been named a defendant in such action or suit. In any case in which the application of the United States to intervene is denied, the adjudication in such civil action or suit shall have no effect upon such lien.'

"SEC. 109. DISCHARGE OF LIENS HELD BY UNITED STATES.

"Subchapter B of chapter 76 (relating to proceedings by taxpayers) is amended by redesignating section 7425 as section 7427 and by inserting after section 7424 the following new section:

"'SEC. 7425 DISCHARGE OF LIENS.

"'(a) JUDICIAL PROCEEDINGS.—If the United States is not joined as a party, a judgment in any civil action or suit described in subsection (a) of section 2410 of title 28 of the United States Code, or a judicial sale pursuant to such a judgment, with respect to property on which the United States has or claims a lien under the provisions of this title—

"'(1) shall be made subject to and without disturbing the lien of the United States, if notice of such lien has been filed in the place provided by law for such filing at the time such action or suit is commenced, or

"'(2) shall have the same effect with respect to the discharge or divestment of such lien of the United States as may be provided with respect to such matters by the local law of the place where such property is situated, if no notice of such lien has been filed in the place provided by law for such filing at the time such action or suit is commenced or if the law makes no provision for such filing.

If a judicial sale of property pursuant to a judgment in any civil action or suit to which the United States is not a party discharges a lien of the United States arising under the provisions of this title, the United States may claim, with the same priority as its lien had against the property sold, the proceeds (exclusive of costs) of such sale at any time before the distribution of such proceeds is ordered.

"'(b) OTHER SALES.—Notwithstanding subsection (a), a sale of property on which the United States has or claims a lien, or a title derived from enforcement of a lien, under the provisions of this title, made pursuant to an instrument creating a lien on such property, pursuant to a confession of judgment on the obligation secured by such an instrument, or pursuant to a nonjudicial sale under a statutory lien on such property—

"'(1) shall, except as otherwise provided, be made subject to and without disturbing such lien or title, if notice of this lien was filed or such title recorded in the place provided by law for such filing or recording more than 30 days before such sale and the United States is not given notice of such sale in the manner prescribed in subsection (c)(1); or

"'(2) shall have the same effect with respect to the discharge or divestment of such lien or such title of the United States, as may be provided with respect to such matters by the local law of the place where such property is situated, if—

"'(A) notice of such lien or such title was not filed or recorded in the place provided by law for such filing more than 30 days before such sale,

"'(B) the law makes no provision for such filing, or

"'(C) notice of such sale is given in the manner prescribed in subsection (c)(1).

"'(c) SPECIAL RULES.—

"'(1) NOTICE OF SALE.—Notice of a sale to which subsection (b) applies shall be given (in accordance with regulations prescribed by the Secretary or his delegate) in writing, by registered or certified mail or by personal service, not less than 25 days prior to such sale, to the Secretary or his delegate.

"'(2) CONSENT TO SALE.—Notwithstanding the notice requirement of subsection (b)(2)(C), a sale described in subsection (b) of property shall discharge or divest such property of the lien or title of the United States if the United States consents to the sale of such property free of such lien or title.

"'(3) SALE OF PERISHABLE GOODS.—Notwithstanding the notice requirement of subsection (b)(2)(C), a sale described in subsection (b) of property liable to perish or become greatly reduced in price or value by keeping, or which cannot be kept without great expense, shall discharge or divest such property of the lien or title of the United States if notice of such sale is given (in accordance with regulations prescribed by the Secretary or his delegate) in writing, by registered or certified mail or by personal service, to the Secretary or his delegate before such sale. The proceeds (exclusive of costs) of such sale shall be held as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as such liens and claims had with respect to the property sold, for not less than 30 days after the date of such sale.

"'(d) REDEMPTION BY UNITED STATES.—

"'(1) RIGHT TO REDEEM.—In the case of a sale of real property to which subsection (b) applies to satisfy a lien prior to that of the United States, the Secretary or his delegate may redeem such property within the period of 120 days from the date of such sale or the period allowable for redemption under local law, whichever is longer.

"'(2) AMOUNT TO BE PAID.—In any case in which the United States redeems real prop-

erty pursuant to paragraph (1), the amount to be paid for such property shall be the amount prescribed by subsection (d) of section 2410 of title 28 of the United States Code.

"'(3) CERTIFICATE OF REDEMPTION.—

"'(A) IN GENERAL.—In any case in which real property is redeemed by the United States pursuant to this subsection, the Secretary or his delegate shall apply to the officer designated by local law, if any, for the documents necessary to evidence the fact of redemption and to record title to such property in the name of the United States. If no such officer is designated by local law or if such officer fails to issue such documents, the Secretary or his delegate shall execute a certificate of redemption therefor.

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"'(B) FILING.—The Secretary or his delegate shall, without delay, cause such documents or certificate to be duly recorded in the proper registry of deeds. If the State in which the real property redeemed by the United States is situated has not by law designated an office in which such certificate may be recorded, the Secretary or his delegate shall file such certificate in the office of the clerk of the United States district court for the judicial district in which such property is situated.

"'(C) EFFECT.—A certificate of redemption executed by the Secretary or his delegate shall constitute prima facie evidence of the regularity of such redemption and shall, when recorded, transfer to the United States all the rights, title, and interest in and to such property acquired by the person from whom the United States redeems such property by virtue of the sale of such property.'

"SEC. 110. PROCEEDINGS BY THIRD PARTIES AGAINST THE UNITED STATES.

"(a) ACTIONS BY THIRD PARTIES.—Subchapter B of chapter 76 (relating to proceedings by taxpayers) is amended by inserting after section 7425 (as added by section 109 of this Act) the following new section:

"'SEC. 7426. CIVIL ACTIONS BY PERSONS OTHER THAN TAXPAYERS.

"'(a) ACTIONS PERMITTED.—

"'(1) WRONGFUL LEVY.—If a levy has been made on property or property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property and that such property was wrongfully levied upon may bring a civil action against the United States in a district court of the United States. Such action may be brought without regard to whether such property has been surrendered to or sold by the Secretary or his delegate.

"'(2) SURPLUS PROCEEDS.—If property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property junior to that of the United States and to be legally entitled to the surplus proceeds of such sale may bring a civil action against the United States in a district court of the United States.

"'(3) SUBSTITUTED SALE PROCEEDS.—If property has been sold pursuant to an agreement described in section 6325(b)(3) (relating to substitution of proceeds of sale), any person who claims to be legally entitled to all or any part of the amount held as a fund pursuant to such agreement may bring a civil action against the United States in a district court of the United States.

"'(b) ADJUDICATION.—The district court shall have jurisdiction to grant only such of the following forms of relief as may be appropriate in the circumstances:

"'(1) INJUNCTION.—If a levy or sale would irreparably injure rights in property which the court determines to be superior to rights of the United States in such property, the court may grant an injunction to prohibit the enforcement of such levy or to prohibit such sale.

"'(2) RECOVERY OF PROPERTY.—If the court determines that such property has been wrongfully levied upon, the court may—

"'(A) order the return of specific property if the United States is in possession of such property;

"'(B) grant a judgment for the amount of money levied upon; or

"'(C) grant a judgment for an amount not exceeding the amount received by the United States from the sale of such property.

For purposes of subparagraph (C), if the property was declared purchased by the United States at a sale pursuant to section 6335(c) (relating to manner and conditions of sale), the United States shall be treated as having received an amount equal to the minimum price determined pursuant to such section or (if larger) the amount received by the United States from the resale of such property.

"'(3) SURPLUS PROCEEDS.—If the court determines that the interest or lien of any party to an action under this section was transferred to the proceeds of a sale of such property, the court may grant a judgment in an amount equal to all or any part of the amount of the surplus proceeds of such sale.

"'(4) SUBSTITUTED SALE PROCEEDS.—If the court determines that a party has an interest in or lien on the amount held as a fund pursuant to an agreement described in section 6325(b)(3) (relating to substitution of proceeds of sale), the court may grant a judgment in an amount equal to all or any part of the amount of such fund.

"'(c) VALIDITY OF ASSESSMENT.—For purposes of an adjudication under this section, the assessment of tax upon which the interest or lien of the United States is based shall be conclusively presumed to be valid.

"'(d) LIMITATION ON RIGHTS OF ACTION.—No action may be maintained against any officer or employee of the United States (or former officer or employee) or his personal representative with respect to any acts for which an action could be maintained under this section.

"'(e) SUBSTITUTION OF UNITED STATES AS PARTY.—If an action, which could be brought against the United States under this section, is improperly brought against any officer or employee of the United States (or former officer or employee) or his personal representative, the court shall order, upon such terms as are just, that the pleadings be amended to substitute the United States as a party for such officer or employee as of the time such action was commenced upon proper service of process on the United States.

"'(f) PROVISION INAPPLICABLE.—The provisions of section 7422(a) (relating to prohibition of suit prior to filing claim for refund) shall not apply to actions under this section.

"'(g) INTEREST.—Interest shall be allowed at the rate of 6 percent per annum—

"'(1) in the case of a judgment pursuant to subsection (b)(2)(B), from the date the Secretary or his delegate receives the money wrongfully levied upon to the date of payment of such judgment; and

"'(2) in the case of a judgment pursuant to subsection (b)(2)(C), from the date of the sale of the property wrongfully levied upon to the date of payment of such judgment.

"'(h) CROSS REFERENCE.—

"'For period of limitation, see section 6532(c).'

"(b) PERIOD OF LIMITATION ON SUIT.—Section 6532 (relating to period of limitation on suits) is amended by adding at the end thereof the following new subsection:

"'(c) SUITS BY PERSONS OTHER THAN TAXPAYERS.—

"'(c) GENERAL RULE.—Except as provided by paragraph (2), no suit or proceeding under section 7426 shall be begun after the expiration of 9 months from the date of the levy or agreement giving rise to such action.

"'(2) PERIOD WHEN CLAIM IS FILED.—If a request is made for the return of property described in section 6343(b), the 9-month period prescribed in paragraph (1) shall be extended for a period of 12 months from the date of filing of such request or for a period of 6 months from the date of mailing by registered or certified mail by the Secretary or his delegate to the person making such request of a notice of disallowance of the part of the request to which the action relates, whichever is shorter.'

"(c) PROHIBITION OF SUITS TO RESTRAIN ASSESSMENT OR COLLECTION.—Section 7421(a) (relating to prohibition of suits to restrain assesment or collection of tax) is amended to read as follows:

"'(a) TAX.—Except as provided in sections 6212 (a) and (c), 6213(a), and 7426 (a) and (b)(1), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.'

"(d) CLERICAL AMENDMENTS.—

"(1) The heading of subchapter B of chapter 76 is amended to read as follows:

"'SUBCHAPTER B—PROCEEDINGS BY TAXPAYERS AND THIRD PARTIES'

"(2) The table of sections for subchapter B of chapter 76 is amended by striking out

"'Sec. 7424. Civil action to clear title to property.

"'Sec. 7425. Cross references.'

and inserting in lieu thereof

"'Sec. 7424. Intervention.

"'Sec. 7425. Discharge of liens.

"'Sec. 7426. Civil actions by persons other than taxpayers.

"'Sec. 7427. Cross references.'

"(3) The table of subchapters for chapter 76 is amended by striking out

"'SUBCHAPTER B. Proceedings by Taxpayers.'

and inserting in lieu thereof

"'SUBCHAPTER B. Proceedings by Taxpayers and Third Parties.'

"SEC. 111. SALE OF PROPERTY ACQUIRED BY UNITED STATES.

"(a) PERSONAL PROPERTY ACQUIRED.—Section 7505(a) (relating to sale of personal property purchased by the United States) is amended by striking out 'purchased by the United States under the authority of section 6335(e) (relating to purchase for the account of the United States of property sold under levy)' and inserting in lieu thereof 'acquired by the United States in payment of or as security for debts arising under the internal revenue laws'.

"(b) REAL PROPERTY REDEEMED.—Section 7506(a) (relating to person charged with administration of real estate acquired by the United States) is amended by striking out 'for the payment of such debts,' and inserting in lieu thereof 'for the payment of such debts, or which has been redeemed by the United States,'.

"(a) CLERICAL AMENDMENTS.—

"(1) The heading of section 7505 is amended by striking out 'PURCHASED' and inserting in lieu thereof 'ACQUIRED';

"(2) The table of sections for chapter 77 is amended by striking out

"'Sec. 7505. Sale of personal property purchased by the United States'

and inserting in lieu thereof

"'Sec. 7505. Sale of personal property acquired by the United States.'

"SEC. 112. FUND FOR REDEMPTION OF REAL PROPERTY BY UNITED STATES.

"(a) CREATION OF FUND FOR REDEMPTION OF REAL PROPERTY.—Subchapter A of chapter 80 (relating to application of internal revenue laws) is amended by adding at the end thereof the following new section:

"'SEC. 7810. REVOLVING FUND FOR REDEMPTION OF REAL PROPERTY.

"'(a) ESTABLISHMENT OF FUND.—There is established a revolving fund, under the control of the Secretary or his delegate, which shall be available without fiscal year limitation for all expenses necessary for the redemption (by the Secretary or his delegate) of real property as provided in section 7425 (d) and section 2410 of title 28 of the United States Code. There are authorized to be appropriated from time to time such sums (not to exceed $1,000,000 in the aggregate) as may be necessary to carry out the purposes of this section.

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"'(b) REIMBURSEMENT OF FUND.—The fund shall be reimbursed from the proceeds of a subsequent sale of real property redeemed by the United States in an amount equal to the amount expended out of such fund for such redemption.

"'(c) SYSTEM OF ACCOUNTS.—The Secretary or his delegate shall maintain an adequate system of accounts for such fund and prepare annual reports on the basis of such accounts.'

"(b) DEPOSIT OF MONEY RECEIVED.—Section 7809 (relating to deposit of collections) is amended by striking out 'and 7654,' in subsection (a) and inserting in lieu thereof '7654, and 7810,'; and by amending subsection (b)—

"(1) by striking out 'and' at the end of paragraph (2),

"(2) by striking out the period at the end of paragraph (3) and inserting in lieu thereof '; and', and

"(3) by inserting after paragraph (3) the following new paragraph:

"'(4) SURPLUS PROCEEDS IN SALES OF REDEEMED PROPERTY.—Surplus proceeds in any sale under section 7506 of real property redeemed by the United States, after making allowance for the amount of the tax, interest,

penalties, and additions thereto, and for the costs of sale.'

"(c) Clerical Amendment. The table of sections for subchapter A of chapter 80 is amended by adding at the end thereof the following:

" 'Sec. 7810. Revolving fund for redemption of real property.'

"Sec. 113. Effect of Judgment on Tax Lien and Levy.

"(a) Lien Not Merged in Judgment.—Section 6322 (relating to period of lien) is amended by inserting after 'liability for the amount so assessed' the following: '(or a judgment against the taxpayer arising out of such liability)'.

"(b) Levy.—Section 6502(a) (relating to length of period for collection after assessment) is amended by adding at the end thereof the following new sentence: 'The period provided by this subsection during which a tax may be collected by levy shall not be extended or curtailed by reason of a judgment against the taxpayer.'

"Sec. 114. Effective Date.

"(a) General Rule.—Except as otherwise provided, the amendments made by this title shall apply after the date of enactment of this Act, regardless of when a lien or a title of the United States arose or when the lien or interest of any other person was acquired.

"(b) Exceptions.—The amendments made by this title shall not apply in any case—

"(1) in which a lien or a title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before the date of enactment of this Act; or

"(2) in which such amendments would—

"(A) impair a priority enjoyed by any person (other than the United States) holding a lien or interest prior to the date of enactment of this Act;

"(B) operate to increase the liability of any such person; or

"(C) shorten the time for bringing suit with respect to transactions occurring before the date of enactment of this Act.

"Liability for Withheld Taxes.—

"(1) The amendments made by section 105(a) (relating to effect on third parties) shall apply only with respect to wages paid on or after January 1, 1967.

"(2) The amendments made by section 105(b) (relating to performance bonds of contractors for public buildings or works) shall apply to contracts entered into pursuant to invitations for bids issued after June 30, 1967.

"(d) Civil Action To Clear Title to Property.—If, before the date of enactment of this Act, any person has commenced a civil action to clear title to property pursuant to section 7424 of the Internal Revenue Code of 1954 as in effect immediately before the enactment of this Act, such action shall be determined in accordance with section 7424 of such Code as in effect immediately before the enactment of this Act.

"TITLE II—CONSENT OF UNITED STATES TO BE SUED IN ACTIONS AFFECTING PROPERTY IN WHICH IT HAS A LIEN OR INTEREST

"Sec. 201. Joinder of United States in Certain Proceedings.

"Section 2410 of title 28 of the United States Code is amended by redesignating subsection (d) as subsection (e) and by striking out subsections (a), (b), and (c) and inserting in lieu thereof the following new subsections:

" '(a) Under the conditions prescribed in this section and section 1444 of this title for the protection of the United States, the United States may be named a party in any civil action or suit in any district court, or in any State court having jurisdiction of the subject matter—

" '(1) to quiet title to,

" '(2) to foreclose a mortgage or other lien upon,

" '(3) to partition,

" '(4) to condemn, or

" '(5) of interpleader or in the nature of interpleader with respect to,

real or personal property on which the United States has or claims a mortgage or other lien.

" '(b) The complaint or pleading shall set forth with particularity the nature of the interest or lien of the United States. In actions or suits involving liens arising under the internal revenue laws, the complaint or pleading shall include the name and address of the taxpayer whose liability created the lien and, if a notice of the tax lien was filed, the identity of the internal revenue office which filed the notice, and the date and place such notice of lien was filed. In actions in the State courts service upon the United States shall be made by serving the process of the court with a copy of the complaint upon the United States attorney for the district in which the action is brought or upon an assistant United States attorney or clerical employee designated by the United States attorney in writing filed with the clerk of the court in which the action is brought and by sending copies of the process and complaint, by registered mail, or by certified mail, to the Attorney General of the United States at Washington, District of Columbia. In such actions the United States may appear and answer, plead or demur within sixty days after such service or such further time as the court may allow.

" '(c) A judgment or decree in such action or suit shall have the same effect respecting the discharge of the property from the mortgage or other lien held by the United States as may be provided with respect to such matters by the local law of the place where the court is situated. However, an action to foreclose a mortgage or other lien, naming the United States as a party under this section, must seek judicial sale. A sale to satisfy a lien inferior to one of the United States shall be made subject to and without disturbing the lien of the United States, unless the United States consents that the property may be sold free of its lien and the proceeds divided as the parties may be entitled. Where a sale of real estate is made to satisfy a lien prior to that of the United States, the United States shall have one year from the date of sale within which to redeem, except that with respect to a lien arising under the internal revenue laws the period shall be 120 days or the period allowable for redemption under State law, whichever is longer, and in any case in which, under the provisions of section 505 of the Housing Act of 1950, as amended (12 U.S.C. 1701k), and subsection (d) of section 1820 of title 38 of the United States Code, the right to redeem does not arise, there shall be no right of redemption. In any case where the debt owing the United States is due, the United States may ask, by way of affirmative relief, for the foreclosure of its

own lien and where property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of its claim with expenses of sale, as may be directed by the head (or his delegate) of the department or agency of the United States which has charge of the administration of the laws in respect to which the claim of the United States arises.

"'(d) In any case in which the United States redeems real property under this section or section 7425 of the Internal Revenue Code of 1954, the amount to be paid for such property shall be the sum of—

"'(1) the actual amount paid by the purchaser at such sale (which, in the case of a purchaser who is the holder of the lien being foreclosed, shall include the amount of the obligation secured by such lien to the extent satisfied by reason of such sale),

"'(2) interest on the amount paid (as determined under paragraph (1)) at 6 percent per annum from the date of such sale, and

"'(3) the amount (if any) equal to the excess of (A) the expenses necessarily incurred in connection with such property, over (B) the income from such property plus (to the extent such property is used by the purchaser) a reasonable rental value of such property.'

"SEC. 202. JURISDICTION AND VENUE IN CERTAIN ACTIONS AGAINST UNITED STATES

"(a) JURISDICTION IN PROCEEDINGS BROUGHT BY THIRD PARTIES.—Section 1346 of title 28 of the United States Code is amended by adding at the end thereof the following new subsection:

"'(e) The district courts shall have original jurisdiction of any civil action against the United States provided in section 7426 of the Internal Revenue Code of 1954.'

"(b) VENUE IN PROCEEDINGS BROUGHT BY THIRD PARTIES.—Section 1402 of title 28 of the United States Code is amended by adding at the end thereof the following new subsection:

"'(c) Any civil action against the United States under subsection (e) of section 1346 of this title may be prosecuted only in the judicial district where the property is situated at the time of levy, or if no levy is made, in the judicial district in which the event occurred which gave rise to the cause of action.'

"SEC 203. EFFECTIVE DATE

"The amendments made by this title shall apply after the date of the enactment of this Act."

Mr. MILLS (during the reading of the committee amendment). Mr. Chairman, I ask unanimous consent that the committee amendment be considered as having been read and printed in the RECORD at this point.

The CHAIRMAN. Without objection, it is so ordered.

There was no objection.

The CHAIRMAN. The question is on the committee amendment.

The committee amendment was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

[*P. 21319*]

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. BOGGS) having resumed the chair, Mr. PICKLE, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, had under consideration the bill (H.R. 11256) to amend the Internal Revenue Code of 1954 with respect to the priority and effect of Federal tax liens and levies, and for other purposes, pursuant to House Resolution 1005, he reported the bill back to the House with an amendment adopted in the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

The question is on the committee amendment.

The committee amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE TO EXTEND

Mr. MILLS. Mr. Speaker, I ask unanimous consent that all Members desiring to do so may extend their remarks in the RECORD just prior to the passage of the bill.

The SPEAKER pro tempore. Without objection, it is so ordered.

There was no objection.

GENERAL LEAVE TO REVISE AND EXTEND

Mr. MILLS. Mr. Speaker, I ask unanimous consent that those of us who spoke on the bill just passed may be permitted to revise and extend our remarks.

The SPEAKER pro tempore. Without objection, it is so ordered.

There was no objection.

SECTION 11

BILL AS PASSED BY THE HOUSE AND REFERRED TO THE SENATE COMMITTEE ON FINANCE

89TH CONGRESS
2D SESSION

H. R. 11256

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 15 (legislative day, SEPTEMBER 7), 1966

Read twice and referred to the Committee on Finance

AN ACT

To amend the Internal Revenue Code of 1954 with respect to the priority and effect of Federal tax liens and levies, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE, ETC.

(a) SHORT TITLE.—This Act may be cited as the "Federal Tax Lien Act of 1966".

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall

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be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

TITLE I—PRIORITY AND EFFECT OF TAX LIENS AND LEVIES

SEC. 101. PRIORITY OF LIENS.

(a) Amendment of Section 6323.—Section 6323 (relating to validity of tax liens against mortgagees, pledgees, purchasers, and judgment creditors) is amended to read as follows:

"SEC. 6323. VALIDITY AND PRIORITY AGAINST CERTAIN PERSONS.

"(a) Purchasers, Holders of Security Interests, Mechanic's Lienors, and Judgment Lien Creditors.—The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary or his delegate.

"(b) Protection for Certain Interests Even Though Notice Filed.—Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid—

"(1) Securities.—With respect to a security (as defined in subsection (h) (4))—

"(A) as against a purchaser of such security

who at the time of purchase did not have actual notice or knowledge of the existence of such lien; and

"(B) as against a holder of a security interest in such security who, at the time such interest came into existence, did not have actual notice or knowledge of the existence of such lien.

"(2) MOTOR VEHICLES.—With respect to a motor vehicle (as defined in subsection (h) (3)), as against a purchaser of such motor vehicle, if—

"(A) at the time of the purchase such purchaser did not have actual notice or knowledge of the existence of such lien, and

"(B) before the purchaser obtains such notice or knowledge, he has acquired possession of such motor vehicle and has not thereafter relinquished possession of such motor vehicle to the seller or his agent.

"(3) PERSONAL PROPERTY PURCHASED AT RETAIL.—With respect to tangible personal property purchased at retail, as against a purchaser in the ordinary course of the seller's trade or business, unless at the time of such purchase such purchaser intends such purchase to (or knows such purchase will) hinder, evade, or defeat the collection of any tax under this title.

"(4) PERSONAL PROPERTY PURCHASED IN CASUAL SALE.—With respect to household goods, personal effects, or other tangible personal property described in section 6334(a) purchased (not for resale) in a casual sale for less than $250, as against the purchaser, but only if such purchaser does not have actual notice or knowledge (A) of the existence of such lien, or (B) that this sale is one of a series of sales.

"(5) PERSONAL PROPERTY SUBJECT TO POSSESSORY LIEN.—With respect to tangible personal property subject to a lien under local law securing the reasonable price of the repair or improvement of such property, as against a holder of such a lien, if such holder is, and has been, continuously in possession of such property from the time such lien arose.

"(6) REAL PROPERTY TAX AND SPECIAL ASSESSMENT LIENS.—With respect to real property, as against a holder of a lien upon such property, if such lien is entitled under local law to priority over security interests in such property which are prior in time, and such lien secures payment of—

"(A) a tax of general application levied by any taxing authority based upon the value of such property;

"(B) a special assessment imposed directly

upon such property by any taxing authority, if such assessment is imposed for the purpose of defraying the cost of any public improvement; or

"(C) charges for utilities or public services furnished to such property by the United States, a State or political subdivision thereof, or an instrumentality of any one or more of the foregoing.

"(7) Residential property subject to a mechanic's lien for certain repairs and improvements.—With respect to real property subject to a lien for repair or improvement of a personal residence (containing not more than four dwelling units) occupied by the owner of such residence, as against a mechanic's lienor, but only if the contract price on the contract with the owner is not more than $1,000.

"(8) Attorneys' liens.—With respect to a judgment or other amount in settlement of a claim or of a cause of action, as against an attorney who, under local law, holds a lien upon or a contract enforcible against such judgment or amount, to the extent of his reasonable compensation for obtaining such judgment or procuring such settlement, except that this paragraph shall not apply to any judgment or amount in settlement of a claim or of a cause of action against the United States to the extent that the United States offsets such judg-

ment or amount against any liability of the taxpayer to the United States.

"(9) Certain insurance contracts.—With respect to a life insurance, endowment, or annuity contract, as against the organization which is the insurer under such contract, at any time—

"(A) before such organization had actual notice or knowledge of the existence of such lien;

"(B) after such organization had such notice or knowledge, with respect to advances required to be made automatically to maintain such contract in force under an agreement entered into before such organization had such notice or knowledge; or

"(C) after satisfaction of a levy pursuant to section 6332(b), unless and until the Secretary or his delegate delivers to such organization a notice, executed after the date of such satisfaction, of the existence of such lien.

"(10) Passbook loans.—With respect to a savings deposit, share, or other account, evidenced by a passbook, with an institution described in section 581 or 591, to the extent of any loan made by such institution without actual notice or knowledge of the existence of such lien, as against such institution, if such loan is secured by such account and if such institution has been

continuously in possession of such passbook from the time the loan is made.

"(c) PROTECTION FOR CERTAIN COMMERCIAL TRANSACTIONS FINANCING AGREEMENTS, ETC.—

"(1) IN GENERAL.—To the extent provided in this subsection, even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing but which—

"(A) is in qualified property covered by the terms of a written agreement entered into before tax lien filing and constituting—

"(i) a commercial transactions financing agreement,

"(ii) a real property construction or improvement financing agreement, or

"(iii) an obligatory disbursement agreement, and

"(B) is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

"(2) COMMERCIAL TRANSACTIONS FINANCING AGREEMENT.—For purposes of this subsection—

"(A) DEFINITION.—The term 'commercial transactions financing agreement' means an agree-

ment (entered into by a person in the course of his trade or business)—

"(i) to make loans to the taxpayer to be secured by commercial financing security acquired by the taxpayer in the ordinary course of his trade or business, or

"(ii) to purchase commercial financing security (other than inventory) acquired by the taxpayer in the ordinary course of his trade or business;

but such an agreement shall be treated as coming within the term only to the extent that such loan or purchase is made before the 46th day after the date of tax lien filing or (if earlier) before the lender or purchaser had actual notice or knowledge of such tax lien filing.

"(B) LIMITATION ON QUALIFIED PROPERTY.—The term 'qualified property', when used with respect to a commercial transactions financing agreement, includes only commercial financing security acquired by the taxpayer before the 46th day after the date of tax lien filing.

"(C) COMMERCIAL FINANCING SECURITY DEFINED.—The term 'commercial financing security' means (i) paper of a kind ordinarily arising in

commercial transactions, (ii) accounts receivable, (iii) mortgages on real property, and (iv) inventory.

"(D) PURCHASER TREATED AS ACQUIRING SECURITY INTEREST.—A person who satisfies subparagraph (A) by reason of clause (ii) thereof shall be treated as having acquired a security interest in commercial financing security.

"(3) REAL PROPERTY CONSTRUCTION OR IMPROVEMENT FINANCING AGREEMENT.—For purposes of this subsection—

"(A) DEFINITION.—The term 'real property construction or improvement financing agreement' means an agreement to make cash disbursements to finance—

"(i) the construction or improvement of real property,

"(ii) a contract to construct or improve real property, or

"(iii) the raising or harvesting of a farm crop or the raising of livestock or other animals.

For purposes of clause (iii), the furnishing of goods and services shall be treated as the disbursement of cash.

"(B) LIMITATION ON QUALIFIED PROPERTY.—The term 'qualified property', when used with respect to a real property construction or improvement financing agreement, includes only—

"(i) in the case of subparagraph (A) (i), the real property with respect to which the construction or improvement has been or is to be made,

"(ii) in the case of subparagraph (A) (ii), the proceeds of the contract described therein, and

"(iii) in the case of subparagraph (A) (iii), property subject to the lien imposed by section 6321 at the time of tax lien filing and the crop or the livestock or other animals referred to in subparagraph (A) (iii).

"(4) OBLIGATORY DISBURSEMENT AGREEMENT.—For purposes of this subsection—

"(A) DEFINITION.—The term 'obligatory disbursement agreement' means an agreement (entered into by a person in the course of his trade or business) to make disbursements, but such an agreement shall be treated as coming within the term only to the extent of disbursements which are required to be

made by reason of the intervention of the rights of a person other than the taxpayer.

"(B) LIMITATION ON QUALIFIED PROPERTY.—The term 'qualified property', when used with respect to an obligatory disbursement agreement, means property subject to the lien imposed by section 6321 at the time of tax lien filing and (to the extent that the acquisition is directly traceable to the disbursements referred to in subparagraph (A)) property acquired by the taxpayer after tax lien filing.

"(C) SPECIAL RULES FOR SURETY AGREEMENTS.—Where the obligatory disbursement agreement is an agreement ensuring the performance of a contract between the taxpayer and another person—

"(i) the term 'qualified property' shall be treated as also including the proceeds of the contract the performance of which was ensured, and

"(ii) if the contract the performance of which was ensured was a contract to construct or improve real property, to produce goods, or to furnish services, the term 'qualified property' shall be treated as also including any tan-

gible personal property used by the taxpayer in the performance of such ensured contract.

"(d) 45-DAY PERIOD FOR MAKING DISBURSEMENTS.—Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing by reason of disbursements made before the 46th day after the date of tax lien filing, or (if earlier) before the person making such disbursements had actual notice or knowledge of tax lien filing, but only if such security interest—

"(1) is in property (A) subject, at the time of tax lien filing, to the lien imposed by section 6321, and (B) covered by the terms of a written agreement entered into before tax lien filing, and

"(2) is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

"(e) PRIORITY OF INTEREST AND EXPENSES.—If the lien imposed by section 6321 is not valid as against a lien or security interest, the priority of such lien or security interest shall extend to—

"(1) any interest or carrying charges upon the obligation secured,

"(2) the reasonable charges and expenses of an

indenture trustee or agent holding the security interest for the benefit of the holder of the security interest,

"(3) the reasonable expenses, including reasonable compensation for attorneys, actually incurred in collecting or enforcing the obligation secured,

"(4) the reasonable costs of insuring, preserving, or repairing the property to which the lien or security interest relates,

"(5) the reasonable costs of insuring payment of the obligation secured, and

"(6) amounts paid to satisfy any lien on the property to which the lien or security interest relates, but only if the lien so satisfied is entitled to priority over the lien imposed by section 6321,

to the extent that, under local law, any such item has the same priority as the lien or security interest to which it relates.

"(f) Place for Filing Notice; Form.—The notice referred to in subsection (a) shall be filed—

"(1) Under state laws.—In the office designated by the law of the State in which the property subject to the lien is situated, whenever the State has by law designated an office within the State for the filing of such notice; or

"(2) With clerk of district court.—In the

office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State has not by law designated an office within the State for the filing of such notice; or

"(3) WITH RECORDER OF DEEDS OF THE DISTRICT OF COLUMBIA.—In the office of the Recorder of Deeds of the District of Columbia, if the property subject to the lien is situated in the District of Columbia."

If the notice filed pursuant to paragraph (1) is in such form as would be valid if filed with the clerk of the United States district court pursuant to paragraph (2), such notice shall be valid notwithstanding any law of the State regarding the form or content of a notice of lien.

"(g) REFILING OF NOTICE.—

"(1) IN GENERAL.—For purposes of this section, unless notice of lien is refiled (in the office in which the prior notice was filed) during the required refiling period, such notice of lien shall be treated as filed on the date on which it is filed (in accordance with subsection (f)) after the expiration of such refiling period.

"(2) REQUIRED REFILING PERIOD.—In the case of any notice of lien, the term 'required refiling period' means—

"(A) the one-year period ending 30 days after

the expiration of 6 years after the date of the assessment of the tax, and

"(B) the one-year period ending with the expiration of 6 years after the close of the preceding required refiling period for such notice of lien.

"(3) TRANSITIONAL RULE.—Notwithstanding paragraph (2), if the assessment of the tax was made before January 1, 1962, the first required refiling period shall be the calendar year 1967.

"(h) DEFINITIONS.—For purposes of this section and section 6324—

"(1) SECURITY INTEREST.—The term 'security interest' means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time (A) if, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien arising out of an unsecured obligation, and (B) to the extent that, at such time, the holder has parted with money or money's worth.

"(2) MECHANIC'S LIENOR.—The term 'mechanic's lienor' means any person who under local law has a lien on real property (or on the proceeds of a contract relating to real property) for services, labor, or materials

furnished in connection with the construction or improvement of such property. For purposes of the preceding sentence, a person has a lien on the earliest date such lien becomes valid under local law against subsequent purchasers without actual notice, but not before he begins to furnish the services, labor, or materials.

"(3) MOTOR VEHICLE.—The term 'motor vehicle' means a self-propelled vehicle which is registered for highway use under the laws of any State or foreign country.

"(4) SECURITY.—The term 'security' means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by a corporation or a government or political subdivision thereof, with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

"(5) TAX LIEN FILING.—The term 'tax lien filing' means the filing of notice (referred to in subsection (a)) of the lien imposed by section 6321.

"(6) PURCHASER.—The term 'purchaser' means a person who, for adequate and full consideration in

money or money's worth, acquires an interest (other than a lien or security interest) in property which is valid under local law against subsequent purchasers without actual notice. In applying the preceding sentence for purposes of subsection (a) of this section, and for purposes of section 6324—

"(A) a lease of property,

"(B) a written executory contract to purchase or lease property,

"(C) an option to purchase or lease property or any interest therein, or

"(D) an option to renew or extend a lease of property,

which is not a lien or security interest shall be treated as an interest in property.

"(i) SPECIAL RULES.—

"(1) ACTUAL NOTICE OR KNOWLEDGE.—For purposes of this subchapter, an organization shall be deemed for purposes of a particular transaction to have actual notice or knowledge of any fact from the time such fact is brought to the attention of the individual conducting such transaction, and in any event from the time such fact would have been brought to such individual's attention if the organization had exercised due diligence.

An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

"(2) SUBROGATION.—Where, under local law, one person is subrogated to the rights of another with respect to a lien or interest, such person shall be subrogated to such rights for purposes of any lien imposed by section 6321 or 6324.

"(3) DISCLOSURE OF AMOUNT OF OUTSTANDING LIEN.—If a notice of lien has been filed pursuant to subsection (f), the Secretary or his delegate is authorized to provide by regulations the extent to which, and the conditions under which, information as to the amount of the outstanding obligation secured by the lien may be disclosed."

(b) Clerical Amendments.—

(1) The table of sections for subchapter C of chapter 64 is amended by striking out

"Sec. 6323. Validity against mortgagees, pledgees, purchasers, and judgment creditors."

and inserting in lieu thereof

"Sec. 6323. Validity and priority against certain persons."

(2) Section 545 (b) (9) is amended by striking out "section 6323 (a) (1), (2), or (3)" and inserting in lieu thereof "section 6323 (f)".

SEC. 102. SPECIAL LIENS FOR ESTATE AND GIFT TAXES.

Section 6324 (relating to special liens for estate and gift taxes) is amended to read as follows:

"SEC. 6324. SPECIAL LIENS FOR ESTATE AND GIFT TAXES.

"(a) Liens for Estate Tax.—Except as otherwise provided in subsection (c)—

"(1) Upon gross estate.—Unless the estate tax imposed by chapter 11 is sooner paid in full, or becomes unenforceable by reason of lapse of time, it shall be a lien upon the gross estate of the decedent for 10 years from the date of death, except that such part of the gross estate as is used for the payment of charges against

the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien.

"(2) LIABILITY OF TRANSFEREES AND OTHERS.—If the estate tax imposed by chapter 11 is not paid when due, then the spouse, transferee, trustee (except the trustee of an employees' trust which meets the requirements of section 401 (a)), surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042, inclusive, to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax. Any part of such property transferred by (or transferred by a transferee of) such spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary, to a purchaser or holder of a security interest shall be divested of the lien provided in paragraph (1) and a like lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary, or transferee of any such person, except any part transferred to a purchaser or a holder of a security interest.

"(3) CONTINUANCE AFTER DISCHARGE OF EXECUTOR.—The provisions of section 2204 (relating to discharge of executor from personal liability) shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless such part of the gross estate (or any interest therein) has been transferred to a purchaser or a holder of a security interest, in which case such part (or such interest) shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser or holder of a security interest, by the heirs, legatees, devisees, or distributees.

"(b) LIEN FOR GIFT TAX.—Except as otherwise provided in subsection (c), unless the gift tax imposed by chapter 12 is sooner paid in full or becomes unenforceable by reason of lapse of time, such tax shall be a lien upon all gifts made during the calendar year, for 10 years from the date the gifts are made. If the tax is not paid when due, the donee of any gift shall be personally liable for such tax to the extent of the value of such gift. Any part of the property comprised in the gift transferred by the donee (or by a transferee of the donee) to a purchaser or holder of a security interest shall be divested of the lien imposed by this subsection and such lien, to the extent of the value of such

gift, shall attach to all the property (including after-acquired property) of the donee (or the transferee) except any part transferred to a purchaser or holder of a security interest.

"(c) EXCEPTIONS.—

"(1) The lien imposed by subsection (a) or (b) shall not be valid as against a mechanic's lienor and, subject to the conditions provided by section 6323 (b) (relating to protection for certain interests even though noticed filed), shall not be valid with respect to any lien or interest described in section 6323 (b).

"(2) If a lien imposed by subsection (a) or (b) is not valid as against a lien or security interest, the priority of such lien or security interest shall extend to any item described in section 6323 (e) (relating to priority of interest and expenses) to the extent that, under local law, such item has the same priority as the lien or security interest to which it relates."

SEC. 103. CERTIFICATES RELATING TO LIENS.

(a) AMENDMENT OF SECTION 6325.—Section 6325 (relating to release of lien or partial discharge of property) is amended to read as follows:

"SEC. 6325. RELEASE OF LIEN OR DISCHARGE OF PROPERTY.

"(a) RELEASE OF LIEN.—Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary

or his delegate may issue a certificate of release of any lien imposed with respect to any internal revenue tax if—

"(1) LIABILITY SATISFIED OR UNENFORCEABLE.—The Secretary or his delegate finds that the liability for the amount assessed, together with all interest in respect thereof, has been fully satisfied or has become legally unenforceable; or

"(2) BOND ACCEPTED.—There is furnished to the Secretary or his delegate and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified by such regulations.

"(b) DISCHARGE OF PROPERTY.—

"(1) PROPERTY DOUBLE THE AMOUNT OF THE LIABILITY.—Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to any lien imposed under this chapter if the Secretary or his delegate finds that the fair market value of that part of such property remaining

subject to the lien is at least double the amount of the unsatisfied liability secured by such lien and the amount of all other liens upon such property which have priority over such lien.

"(2) PART PAYMENT; INTEREST OF UNITED STATES VALUELESS.—Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to the lien if—

"(A) there is paid over to the Secretary or his delegate in partial satisfaction of the liability secured by the lien an amount determined by the Secretary or his delegate, which shall not be less than the value, as determined by the Secretary or his delegate, of the interest of the United States in the part to be so discharged, or

"(B) the Secretary or his delegate determines at any time that the interest of the United States in the part to be so discharged has no value.

In determining the value of the interest of the United States in the part to be so discharged, the Secretary or his delegate shall give consideration to the value of such part and to such liens thereon as have priority over the lien of the United States.

"(3) SUBSTITUTION OF PROCEEDS OF SALE.—Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to the lien if such part of the property is sold and, pursuant to an agreement with the Secretary or his delegate, the proceeds of such sale are to be held, as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as such liens and claims had with respect to the discharged property.

"(c) ESTATE OR GIFT TAX.—Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any or all of the property subject to any lien imposed by section 6324 if the Secretary or his delegate finds that the liability secured by such lien has been fully satisfied or provided for.

"(d) SUBORDINATION OF LIEN.—Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of subordination of any lien imposed by this chapter upon any part of the property subject to such lien if—

"(1) there is paid over to the Secretary or his delegate an amount equal to the amount of the lien or interest to which the certificate subordinates the lien of the United States, or

"(2) the Secretary or his delegate believes that the amount realizable by the United States from the property to which the certificate relates, or from any other property subject to the lien, will ultimately be increased by reason of the issuance of such certificate and that the ultimate collection of the tax liability will be facilitated by such subordination.

"(e) NONATTACHMENT OF LIEN.—If the Secretary or his delegate determines that, because of confusion of names or otherwise, any person (other than the person against whom the tax was assessed) is or may be injured by the appearance that a notice of lien filed under section 6323 refers to such person, the Secretary or his delegate may issue a certificate that the lien does not attach to the property of such person.

"(f) EFFECT OF CERTIFICATE.—

"(1) CONCLUSIVENESS.—Except as provided in paragraphs (2) and (3), if a certificate is issued pursuant to this section by the Secretary or his delegate and is filed in the same office as the notice of lien to which

it relates (if such notice of lien has been filed) such certificate shall have the following effect:

"(A) in the case of a certificate of release, such certificate shall be conclusive that the lien referred to in such certificate is extinguished;

"(B) in the case of a certificate of discharge, such certificate shall be conclusive that the property covered by such certificate is discharged from the lien;

"(C) in the case of a certificate of subordination, such certificate shall be conclusive that the lien or interest to which the lien of the United States is subordinated is superior to the lien of the United States; and

"(D) in the case of a certificate of nonattachment, such certificate shall be conclusive that the lien of the United States does not attach to the property of the person referred to in such certificate.

"(2) REVOCATION OF CERTIFICATE OF RELEASE OR NONATTACHMENT.—If the Secretary or his delegate determines that a certificate of release or nonattachment of a lien imposed by section 6321 was issued erroneously or improvidently, or if a certificate of release of such lien was issued pursuant to a collateral

agreement entered into in connection with a compromise under section 7122 which has been breached, and if the period of limitation on collection after assessment has not expired, the Secretary or his delegate may revoke such certificate and reinstate the lien—

"(A) by mailing notice of such revocation to the person against whom the tax was assessed at his last known address, and

"(B) by filing notice of such revocation in the same office in which the notice of lien to which it relates was filed (if such notice of lien had been filed).

Such reinstated lien (i) shall be effective on the date notice of revocation is mailed to the taxpayer in accordance with the provisions of subparagraph (A), but not earlier than the date on which any required filing of notice of revocation is filed in accordance with the provisions of subparagraph (B), and (ii) shall have the same force and effect (as of such date), until the expiration of the period of limitation on collection after assessment, as a lien imposed by section 6321 (relating to lien for taxes).

"(3) CERTIFICATES VOID UNDER CERTAIN CONDITIONS.—Notwithstanding any other provision of this subtitle, any lien imposed by this chapter shall attach

to any property with respect to which a certificate of discharge has been issued if the person liable for the tax reacquires such property after such certificate has been issued.

"(g) FILING OF CERTIFICATES AND NOTICES.—If a certificate or notice issued pursuant to this section may not be filed in the office designated by State law in which the notice of lien imposed by section 6321 is filed, such certificate or notice shall be effective if filed in the office of the clerk of the United States district court for the judicial district in which such office is situated.

"(h) CROSS REFERENCE.—

"For provisions relating to bonds, see chapter 73 (sec. 7101 and following)."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter C of chapter 64 is amended by striking out

"Sec. 6325. Release of lien or partial discharge of property."

and inserting in lieu thereof

"Sec. 6325. Release of lien or discharge of property."

SEC. 104. SEIZURE OF PROPERTY FOR COLLECTION OF TAXES.

(a) EFFECT OF LEVY.—Section 6331(b) (relating to seizure and sale of property by levy and distraint) is amended by inserting after the first sentence the following new sentence: "A levy shall extend only to property possessed and obligations existing at the time thereof."

(b) Surrender of Property Subject to Levy.—Section 6332 (relating to surrender of property subject to levy) is amended—

(1) by striking out "Any person" in subsection (a) and inserting in lieu thereof "Except as otherwise provided in subsection (b), any person";

(2) by amending subsection (b) to read as follows:

"(b) Special Rule for Life Insurance and Endowment Contracts.—

"(1) In general.—A levy on an organization with respect to a life insurance or endowment contract issued by such organization shall, without necessity for the surrender of the contract document, constitute a demand by the Secretary or his delegate for payment of the amount described in paragraph (2) and the exercise of the right of the person against whom the tax is assessed to the advance of such amount. Such organization shall pay over such amount 90 days after service of notice of levy. Such notice shall include a certification by the Secretary or his delegate that a copy of such notice has been mailed to the person against whom the tax is assessed at his last known address.

"(2) Satisfaction of levy.—Such levy shall be deemed to be satisfied if such organization pays over to the Secretary or his delegate the amount which the per-

son against whom the tax is assessed could have had advanced to him by such organization on the date prescribed in paragraph (1) for the satisfaction of such levy, increased by the amount of any advance (including contractual interest thereon) made to such person on or after the date such organization had actual notice or knowledge (within the meaning of section 6323 (i) (1)) of the existence of the lien with respect to which such levy is made, other than an advance (including contractual interest thereon) made automatically to maintain such contract in force under an agreement entered into before such organization had such notice or knowledge.

"(3) ENFORCEMENT PROCEEDINGS.—The satisfaction of a levy under paragraph (2) shall be without prejudice to any civil action for the enforcement of any lien imposed by this title with respect to such contract.";

(3) by redesignating subsection (c) as subsection (e); and

(4) by inserting after subsection (b) the following new subsections:

"(c) ENFORCEMENT OF LEVY.—

"(1) EXTENT OF PERSONAL LIABILITY.—Any person who fails or refuses to surrender any property or

rights to property, subject to levy, upon demand by the Secretary or his delegate, shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of taxes for the collection of which such levy has been made, together with costs and interest on such sum at the rate of 6 percent per annum from the date of such levy. Any amount (other than costs) recovered under this paragraph shall be credited against the tax liability for the collection of which such levy was made.

"(2) PENALTY FOR VIOLATION.—In addition to the personal liability imposed by paragraph (1), if any person required to surrender property or rights to property fails or refuses to surrender such property or rights to property without reasonable cause, such person shall be liable for a penalty equal to 50 percent of the amount recoverable under paragraph (1). No part of such penalty shall be credited against the tax liability for the collection of which such levy was made.

"(d) EFFECT OF HONORING LEVY.—Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the Secretary or his dele-

gate, surrenders such property or rights to property (or discharges such obligation) to the Secretary or his delegate (or who pays a liability under subsection (c) (1)) shall be discharged from any obligation or liability to the delinquent taxpayer with respect to such property or rights to property arising from such surrender or payment. In the case of a levy which is satisfied pursuant to subsection (b), such organization shall also be discharged from any obligation or liability to any beneficiary arising from such surrender or payment."

(c) Property Exempt From Levy.—Section 6334 (a) (relating to enumeration of property exempt from levy) is amended—

(1) by striking out "or Territory" in paragraph (4); and

(2) by adding at the end thereof the following new paragraphs:

"(6) Certain annuity and pension payments.—Annuity or pension payments under the Railroad Retirement Act, benefits under the Railroad Unemployment Insurance Act, speical pension payments received by a person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal

of Honor roll (38 U.S.C. 562), and annuities based on retired or retainer pay under chapter 73 of title 10 of the United States Code.

"(7) WORKMEN'S COMPENSATION.—Any amount payable to an individual as workmen's compensation (including any portion thereof payable with respect to dependents) under a workmen's compensation law of the United States, any State, the District of Columbia, or the Commonwealth of Puerto Rico."

(d) PUBLICATION OF NOTICE OF SALE.—The first sentence of section 6335(b) (relating to notice of sale of seized property) is amended to read as follows: "The Secretary or his delegate shall as soon as practicable after the seizure of the property give notice to the owner, in the manner prescribed in subsection (a), and shall cause a notification to be published in some newspaper published or generally circulated within the county wherein such seizure is made, or, if there be no newspaper published or generally circulated in such county, shall post such notice at the post office nearest the place where the seizure is made, and in not less than two other public places."

(e) REDEMPTION PERIOD.—Paragraph (1) of section 6337(b) (relating to period of redemption of real estate after sale) is amended by striking out "1 year" and inserting in lieu thereof "120 days".

(f) Preparation of Deed.—Section 6338 (c) (relating to real property purchased by United States) is amended to read as follows:

"(c) Real Property Purchased by United States.—If real property is declared purchased by the United States at a sale pursuant to section 6335, the Secretary or his delegate shall at the proper time execute a deed therefor, and without delay cause such deed to be duly recorded in the proper registry of deeds."

(g) Discharge of Junior Encumbrances.—Section 6339 (relating to legal effect of certificate of sale of personal property and deed of real property) is amended by adding at the end thereof the following new subsections:

"(c) Effect of Junior Encumbrances.—A certificate of sale of personal property given or a deed to real property executed pursuant to section 6338 shall discharge such property from all liens, encumbrances, and titles over which the lien of the United States with respect to which the levy was made had priority.

"(d) Cross References.—

"(1) For distribution of surplus proceeds, see section 6342(b).

"(2) For judicial procedure with respect to surplus proceeds, see section 7426(a)(2)."

(h) Application of Proceeds of Levy and Sale.—Subsection (a) of section 6342 (relating to collection of liability) is amended—

(1) by striking out so much thereof as precedes paragraph (1) and inserting in lieu thereof

"(a) COLLECTION OF LIABILITY.—Any money realized by proceedings under this subchapter (whether by seizure, by surrender under section 6332 (except pursuant to subsection (c)(2) thereof), or by sale of seized property) or by sale of property redeemed by the United States (if the interest of the United States in such property was a lien arising under the provisions of this title) shall be applied as follows:";

(2) by striking out "under this subchapter" in paragraph (1); and

(3) by adding "or the sale was conducted" after "levy was made" in paragraph (3).

(i) RETURN OF PROPERTY.—Section 6343 (relating to authority to release levy) is amended—

(1) by striking out the heading of such section and inserting in lieu thereof the following:

"SEC. 6343. AUTHORITY TO RELEASE LEVY AND RETURN PROPERTY.";

(2) by striking out "It shall be" and inserting in lieu thereof "(a) RELEASE OF LEVY.—It shall be"; and

(3) by adding at the end thereof the following new subsection:

"(b) RETURN OF PROPERTY.—If the Secretary or his

delegate determines that property has been wrongfully levied upon, it shall be lawful for the Secretary or his delegate to return—

"(1) the specific property levied upon,

"(2) an amount of money equal to the amount of money levied upon, or

"(3) an amount of money equal to the amount of money received by the United States from a sale of such property.

Property may be returned at any time. An amount equal to the amount of money levied upon or received from such sale may be returned at any time before the expiration of 9 months from the date of such levy. For purposes of paragraph (3), if property is declared purchased by the United States at a sale pursuant to section 6335(e) (relating to manner and conditions of sale), the United States shall be treated as having received an amount of money equal to the minimum price determined pursuant to such section or (if larger) the amount received by the United States from the resale of such property."

(j) CLERICAL AMENDMENT.—The table of sections for subchapter D of chapter 64 is amended by striking out—

"Sec. 6343. Authority to release levy."

and inserting in lieu thereof

"Sec. 6343. Authority to release levy and return property."

SEC. 105. LIABILITY FOR WITHHELD TAXES.

(a) EFFECT ON THIRD PARTIES.—Chapter 25 (relating to general provisions relating to employment taxes) is amended by adding at the end thereof the following new section:

"SEC. 3505. LIABILITY OF THIRD PARTIES PAYING OR PROVIDING FOR WAGES.

"(a) DIRECT PAYMENT BY THIRD PARTIES.—For purposes of sections 3102, 3202, 3402, and 3403, if a lender, surety, or other person, who is not an employer under such sections with respect to an employee or group of employees, pays wages directly to such an employee or group of employees, employed by one or more employers, or to an agent on behalf of such employee or employees, such lender, surety, or other person shall be liable in his own person and estate to the United States in a sum equal to the taxes (together with interest) required to be deducted and withheld from such wages by such employer.

"(b) PERSONAL LIABILITY WHERE FUNDS ARE SUPPLIED.—If a lender, surety, or other person supplies funds to or for the account of an employer for the specific purpose of paying wages of the employees of such employer, with actual notice or knowledge (within the meaning of section 6323 (i) (1)) that such employer does not intend to or will not be able to make timely payment or deposit of the amounts of tax re-

quired by this subtitle to be deducted and withheld by such employer from such wages, such lender, surety, or other person shall be liable in his own person and estate to the United States in a sum equal to the taxes (together with interest) which are not paid over to the United States by such employer with respect to such wages. However, the liability of such lender, surety, or other person shall be limited to an amount equal to 25 percent of the amount so supplied to or for the account of such employer for such purpose.

"(c) EFFECT OF PAYMENT.—Any amounts paid to the United States pursuant to this section shall be credited against the liability of the employer."

(b) PERFORMANCE BONDS OF CONTRACTORS FOR PUBLIC BUILDINGS OR WORKS.—The first section of the Act entitled "An Act requiring contracts for the construction, alteration, and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by an additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said public buildings or public work", approved August 24, 1935 (49 Stat. 793; 40 U.S.C. 270a), is amended by adding at the end thereof the following new subsection:

"(d) Every performance bond required under this section shall specifically provide coverage for taxes imposed by

the United States which are collected, deducted, or withheld from wages paid by the contractor in carrying out the contract with respect to which such bond is furnished. However, the United States shall give the surety or sureties on such bond written notice, with respect to any such unpaid taxes attributable to any period, within ninety days after the date when such contractor files a return for such period, except that no such notice shall be given more than one hundred and eighty days from the date when a return for the period was required to be filed under the Internal Revenue Code of 1954. No suit on such bond for such taxes shall be commenced by the United States unless notice is given as provided in the preceding sentence, and no such suit shall be commenced after the expiration of one year after the day on which such notice is given."

(c) CLERICAL AMENDMENT.—The table of sections for chapter 25 is amended by adding at the end thereof the following:

"Sec. 3505. Liability of third parties paying or providing for wages."

SEC. 106. SUSPENSION OF RUNNING OF PERIOD OF LIMITATION.

(a) ASSETS OF ESTATE OF DECEDENT OR INCOMPETENT.—Section 6503 (b) (relating to assets of taxpayer in control or custody of court) is amended by striking out

"(other than the estate of a decedent or of an incompetent)" and "or Territory".

(b) Collection Hindered by Absence of Taxpayer.—Section 6503 (c) (relating to location of property outside the United States or removal of property from the Unites States) is amended to read as follows:

"(c) Taxpayer Outside United States.—The running of the period of limitations on collection after assessment prescribed in section 6502 shall be suspended for the period during which the taxpayer is outside the United States if such period of absence is for a continuous period of at least 6 months. If the preceding sentence applies and at the time of the taxpayer's return to the United States the period of limitations on collection after assessment prescribed in section 6502 would expire before the expiration of 6 months from the date of his return, such period shall not expire before the expiration of such 6 months."

(c) Wrongful Seizure of Property of Third Parties.—Section 6503 (relating to suspension of running of period of limitation) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) Wrongful Seizure of Property of Third Party.—The running of the period of limitations on collec-

tion after assessment prescribed in section 6502 shall be suspended for a period equal to the period from the date property (including money) of a third party is wrongfully seized or received by the Secretary or his delegate to the date the Secretary or his delegate returns property pursuant to section 6343 (b) or the date on which a judgment secured pursuant to section 7426 with respect to such property becomes final, and for 30 days thereafter. The running of the period of limitations on collection after assessment shall be suspended under this subsection only with respect to the amount of such assessment equal to the amount of money or the value of specific property returned."

SEC. 107. PROCEEDINGS WHERE UNITED STATES HAS TITLE TO PROPERTY.

(a) ACTION TO QUIET TITLE.—Section 7402 (relating to jurisdiction of district courts) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) TO QUIET TITLE.—The United States district courts shall have jurisdiction of any action brought by the United States to quiet title to property if the title claimed by the United States to such property was derived from enforcement of a lien under this title."

(b) SALE BIDS.—Section 7403 (c) (relating to adjudication and decree) is amended by adding at the end thereof

the following new sentence: "If the property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of such lien with expenses of sale, as the Secretary or his delegate directs."

SEC. 108. INTERVENTION BY UNITED STATES.

Section 7424 (relating to civil action to clear title to property) is amended to read as follows:

"SEC. 7424. INTERVENTION.

"If the United States is not a party to a civil action or suit, the United States may intervene in such action or suit to assert any lien arising under this title on the property which is the subject of such action or suit. The provisions of section 2410 of title 28 of the United States Code (except subsection (b)) and of section 1444 of title 28 of the United States Code shall apply in any case in which the United States intervenes as if the United States had originally been named a defendant in such action or suit. In any case in which the application of the United States to intervene is denied, the adjudication in such civil action or suit shall have no effect upon such lien."

SEC. 109. DISCHARGE OF LIENS HELD BY UNITED STATES.

Subchapter B of chapter 76 (relating to proceedings by taxpayers) is amended by redesignating section 7425 as

section 7427 and by inserting after section 7424 the following new section:

"SEC. 7425. DISCHARGE OF LIENS.

"(a) JUDICIAL PROCEEDINGS.—If the United States is not joined as a party, a judgment in any civil action or suit described in subsection (a) of section 2410 of title 28 of the United States Code, or a judicial sale pursuant to such a judgment, with respect to property on which the United States has or claims a lien under the provisions of this title—

"(1) shall be made subject to and without disturbing the lien of the United States, if notice of such lien has been filed in the place provided by law for such filing at the time such action or suit is commenced, or

"(2) shall have the same effect with respect to the discharge or divestment of such lien of the United States as may be provided with respect to such matters by the local law of the place where such property is situated, if no notice of such lien has been filed in the place provided by law for such filing at the time such action or suit is commenced or if the law makes no provision for such filing.

If a judicial sale of property pursuant to a judgment in any civil action or suit to which the United States is not a party discharges a lien of the United States arising under the provisions of this title, the United States may claim, with the

same priority as its lien had against the property sold, the proceeds (exclusive of costs) of such sale at any time before the distribution of such proceeds is ordered.

"(b) OTHER SALES.—Notwithstanding subsection (a), a sale of property on which the United States has or claims a lien, or a title derived from enforcement of a lien, under the provisions of this title, made pursuant to an instrument creating a lien on such property, pursuant to a confession of judgment on the obligation secured by such an instrument, or pursuant to a nonjudicial sale under a statutory lien on such property—

"(1) shall, except as otherwise provided, be made subject to and without disturbing such lien or title, if notice of such lien was filed or such title recorded in the place provided by law for such filing or recording more than 30 days before such sale and the United States is not given notice of such sale in the manner prescribed in subsection (c) (1); or

"(2) shall have the same effect with respect to the discharge or divestment of such lien or such title of the United States, as may be provided with respect to such matters by the local law of the place where such property is situated, if—

"(A) notice of such lien or such title was not filed or recorded in the place provided by law for

such filing more than 30 days before such sale,

"(B) the law makes no provision for such filing, or

"(C) notice of such sale is given in the manner prescribed in subsection (c) (1).

"(c) SPECIAL RULES.—

"(1) NOTICE OF SALE.—Notice of a sale to which subsection (b) applies shall be given (in accordance with regulations prescribed by the Secretary or his delegate) in writing, by registered or certified mail or by personal service, not less than 25 days prior to such sale, to the Secretary or his delegate.

"(2) CONSENT TO SALE.—Notwithstanding the notice requirement of subsection (b) (2) (C), a sale described in subsection (b) of property shall discharge or divest such property of the lien or title of the United States if the United States consents to the sale of such property free of such lien or title.

"(3) SALE OF PERISHABLE GOODS.—Notwithstanding the notice requirement of subsection (b) (2) (C), a sale described in subsection (b) of property liable to perish or become greatly reduced in price or value by keeping, or which cannot be kept without great expense, shall discharge or divest such property of the lien or title of the United States if notice of such sale is given

(in accordance with regulations prescribed by the Secretary or his delegate) in writing, by registered or certified mail or by personal service, to the Secretary or his delegate before such sale. The proceeds (exclusive of costs) of such sale shall be held as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as such liens and claims had with respect to the property sold, for not less than 30 days after the date of such sale.

"(d) REDEMPTION BY UNITED STATES.—

"(1) RIGHT TO REDEEM.—In the case of a sale of real property to which subsection (b) applies to satisfy a lien prior to that of the United States, the Secretary or his delegate may redeem such property within the period of 120 days from the date of such sale or the period allowable for redemption under local law, whichever is longer.

"(2) AMOUNT TO BE PAID.—In any case in which the United States redeems real property pursuant to paragraph (1), the amount to be paid for such property shall be the amount prescribed by subsection (d) of section 2410 of title 28 of the United States Code.

"(3) CERTIFICATE OF REDEMPTION.—

"(A) IN GENERAL.—In any case in which real property is redeemed by the United States pursuant

to this subsection, the Secretary or his delegate shall apply to the officer designated by local law, if any, for the documents necessary to evidence the fact of redemption and to record title to such property in the name of the United States. If no such officer is designated by local law or if such officer fails to issue such documents, the Secretary or his delegate shall execute a certificate of redemption therefor.

"(B) FILING.—The Secretary or his delegate shall, without delay, cause such documents or certificate to be duly recorded in the proper registry of deeds. If the State in which the real property redeemed by the United States is situated has not by law designated an office in which such certificate may be recorded, the Secretary or his delegate shall file such certificate in the office of the clerk of the United States district court for the judicial district in which such property is situated.

"(C) EFFECT.—A certificate of redemption executed by the Secretary or his delegate shall constitute prima facie evidence of the regularity of such redemption and shall, when recorded, transfer to the United States all the rights, title, and interest in and to such property acquired by the person from

whom the United States redeems such property by virtue of the sale of such property."

SEC. 110. PROCEEDINGS BY THIRD PARTIES AGAINST THE UNITED STATES.

(a) ACTIONS BY THIRD PARTIES.—Subchapter B of chapter 76 (relating to proceedings by taxpayers) is amended by inserting after section 7425 (as added by section 109 of this Act) the following new section:

"SEC. 7426. CIVIL ACTIONS BY PERSONS OTHER THAN TAXPAYERS.

"(a) ACTIONS PERMITTED.—

"(1) WRONGFUL LEVY.—If a levy has been made on property or property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property and that such property was wrongfully levied upon may bring a civil action against the United States in a district court of the United States. Such action may be brought without regard to whether such property has been surrendered to or sold by the Secretary or his delegate.

"(2) SURPLUS PROCEEDS.—If property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such

levy arose) who claims an interest in or lien on such property junior to that of the United States and to be legally entitled to the surplus proceeds of such sale may bring a civil action against the United States in a district court of the United States.

"(3) SUBSTITUTED SALE PROCEEDS.—If property has been sold pursuant to an agreement described in section 6325(b)(3) (relating to substitution of proceeds of sale), any person who claims to be legally entitled to all or any part of the amount held as a fund pursuant to such agreement may bring a civil action against the United States in a district court of the United States.

"(b) ADJUDICATION.—The district court shall have jurisdiction to grant only such of the following forms of relief as may be appropriate in the circumstances:

"(1) INJUNCTION.—If a levy or sale would irreparably injure rights in property which the court determines to be superior to rights of the United States in such property, the court may grant an injunction to prohibit the enforcement of such levy or to prohibit such sale.

"(2) RECOVERY OF PROPERTY.—If the court determines that such property has been wrongfully levied upon, the court may—

"(A) order the return of specific property

if the United States is in possession of such property;

"(B) grant a judgment for the amount of money levied upon; or

"(C) grant a judgment for an amount not exceeding the amount received by the United States from the sale of such property.

For purposes of subparagraph (C), if the property was declared purchased by the United States at a sale pursuant to section 6335(e) (relating to manner and conditions of sale), the United States shall be treated as having received an amount equal to the minimum price determined pursuant to such section or (if larger) the amount received by the United States from the resale of such property.

"(3) SURPLUS PROCEEDS.—If the court determines that the interest or lien of any party to an action under this section was transferred to the proceeds of a sale of such property, the court may grant a judgment in an amount equal to all or any part of the amount of the surplus proceeds of such sale.

"(4) SUBSTITUTED SALE PROCEEDS.—If the court determines that a party has an interest in or lien on the amount held as a fund pursuant to an agreement de-

scribed in section 6325 (b) (3) (relating to substitution of proceeds of sale), the court may grant a judgment in an amount equal to all or any part of the amount of such fund.

"(c) VALIDITY OF ASSESSMENT.—For purposes of an adjudication under this section, the assessment of tax upon which the interest or lien of the United States is based shall be conclusively presumed to be valid.

"(d) LIMITATION ON RIGHTS OF ACTION.—No action may be maintained against any officer or employee of the United States (or former officer or employee) or his personal representative with respect to any acts for which an action could be maintained under this section.

"(e) SUBSTITUTION OF UNITED STATES AS PARTY.—If an action, which could be brought against the United States under this section, is improperly brought against any officer or employee of the United States (or former officer or employee) or his personal representative, the court shall order, upon such terms as are just, that the pleadings be amended to substitute the United States as a party for such officer or employee as of the time such action was commenced upon proper service of process on the United States.

"(f) PROVISION INAPPLICABLE.—The provisions of section 7422 (a) (relating to prohibition of suit prior to

filing claim for refund) shall not apply to actions under this section.

"(g) INTEREST.—Interest shall be allowed at the rate of 6 percent per annum—

"(1) in the case of a judgment pursuant to subsection (b) (2) (B), from the date the Secretary or his delegate receives the money wrongfully levied upon to the date of payment of such judgment; and

"(2) in the case of a judgment pursuant to subsection (b) (2) (C), from the date of the sale of the property wrongfully levied upon to the date of payment of such judgment.

"(h) CROSS REFERENCE.—

"For period of limitation, see section 6532(c)."

(b) PERIOD OF LIMITATION ON SUIT.—Section 6532 (relating to period of limitation on suits) is amended by adding at the end thereof the following new subsection:

"(c) SUITS BY PERSONS OTHER THAN TAXPAYERS.—

"(1) GENERAL RULE.—Except as provided by paragraph (2), no suit or proceeding under section 7426 shall be begun after the expiration of 9 months from the date of the levy or agreement giving rise to such action.

"(2) PERIOD WHEN CLAIM IS FILED.—If a request is made for the return of property described in section 6343 (b), the 9-month period prescribed in paragraph

(1) shall be extended for a period of 12 months from the date of filing of such request or for a period of 6 months from the date of mailing by registered or certified mail by the Secretary or his delegate to the person making such request of a notice of disallowance of the part of the request to which the action relates, whichever is shorter."

(c) PROHIBITION OF SUITS TO RESTRAIN ASSESSMENT OR COLLECTION.—Section 7421 (a) (relating to prohibition of suits to restrain assessment or collection of tax) is amended to read as follows:

"(a) TAX.—Except as provided in sections 6212 (a) and (c), 6213 (a), and 7426 (a) and (b) (1), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed."

(d) CLERICAL AMENDMENTS.—

(1) The heading of subchapter B of chapter 76 is amended to read as follows:

"Subchapter B—Proceedings by Taxpayers and Third Parties"

(2) The table of sections for subchapter B of chapter 76 is amended by striking out

"Sec. 7424. Civil action to clear title to property.
"Sec. 7425. Cross references."

and inserting in lieu thereof

"Sec. 7424. Intervention.
"Sec. 7425. Discharge of liens.
"Sec. 7426. Civil actions by persons other than taxpayers.
"Sec. 7427. Cross references."

(3) The table of subchapters for chapter 76 is amended by striking out

"SUBCHAPTER B. Proceedings by Taxpayers."

and inserting in lieu thereof

"SUBCHAPTER B. Proceedings by Taxpayers and Third Parties."

SEC. 111. SALE OF PROPERTY ACQUIRED BY UNITED STATES.

(a) PERSONAL PROPERTY ACQUIRED.—Section 7505 (a) (relating to sale of personal property purchased by the United States) is amended by striking out "purchased by the United States under the authority of section 6335 (e) (relating to purchase for the account of the United States of property sold under levy)" and inserting in lieu thereof "acquired by the United States in payment of or as security for debts arising under the internal revenue laws".

(b) REAL PROPERTY REDEEMED.—Section 7506 (a) (relating to person charged with administration of real estate acquired by the United States) is amended by striking out "for the payment of such debts," and inserting in lieu thereof "for the payment of such debts, or which has been redeemed by the United States,".

(c) CLERICAL AMENDMENTS.—

(1) The heading of section 7505 is amended by striking out "PURCHASED" and inserting in lieu thereof "ACQUIRED";

(2) The table of sections for chapter 77 is amended by striking out

"Sec. 7505. Sale of personal property purchased by the United States."

and inserting in lieu thereof

"Sec. 7505. Sale of personal property acquired by the United States."

SEC. 112. FUND FOR REDEMPTION OF REAL PROPERTY BY UNITED STATES.

(a) CREATION OF FUND FOR REDEMPTION OF REAL PROPERTY.—Subchapter A of chapter 80 (relating to application of internal revenue laws) is amended by adding at the end thereof the following new section:

"SEC. 7810. REVOLVING FUND FOR REDEMPTION OF REAL PROPERTY.

"(a) ESTABLISHMENT OF FUND.—There is established a revolving fund, under the control of the Secretary or his delegate, which shall be available without fiscal year limitation for all expenses necessary for the redemption (by the Secretary or his delegate) of real property as provided in section 7425(d) and section 2410 of title 28 of the United States Code. There are authorized to be appropriated from

time to time such sums (not to exceed $1,000,000 in the aggregate) as may be necessary to carry out the purposes of this section.

"(b) Reimbursement of Fund.—The fund shall be reimbursed from the proceeds of a subsequent sale of real property redeemed by the United States in an amount equal to the amount expended out of such fund for such redemption.

"(c) System of Accounts.—The Secretary or his delegate shall maintain an adequate system of accounts for such fund and prepare annual reports on the basis of such accounts."

(b) Deposit of Money Received.—Section 7809 (relating to deposit of collections) is amended by striking out "and 7654," in subsection (a) and inserting in lieu thereof "7654, and 7810,"; and by amending subsection (b)—

(1) by striking out "and" at the end of paragraph (2),

(2) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and", and

(3) by inserting after paragraph (3) the following new paragraph:

"(4) Surplus proceeds in sales of redeemed property.—Surplus proceeds in any sale

under section 7506 of real property redeemed by the United States, after making allowance for the amount of the tax, interest, penalties, and additions thereto, and for the costs of sale."

(c) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 80 is amended by adding at the end thereof the following:

"Sec. 7810. Revolving fund for redemption of real property."

SEC. 113. EFFECT OF JUDGMENT ON TAX LIEN AND LEVY.

(a) LIEN NOT MERGED IN JUDGMENT.—Section 6322 (relating to period of lien) is amended by inserting after "liability for the amount so assessed" the following: "(or a judgment against the taxpayer arising out of such liability)".

(b) LEVY.—Section 6502(a) (relating to length of period for collection after assessment) is amended by adding at the end thereof the following new sentence: "The period provided by this subsection during which a tax may be collected by levy shall not be extended or curtailed by reason of a judgment against the taxpayer."

SEC. 114. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as otherwise provided, the amendments made by this title shall apply after the date of enactment of this Act, regardless of when a lien or a title of the United States arose or when the lien or interest of any other person was acquired.

(b) EXCEPTIONS.—The amendments made by this title shall not apply in any case—

(1) in which a lien or a title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before the date of enactment of this Act; or

(2) in which such amendments would—

(A) impair a priority enjoyed by any person (other than the United States) holding a lien or interest prior to the date of enactment of this Act;

(B) operate to increase the liability of any such person; or

(C) shorten the time for bringing suit with respect to transactions occurring before the date of enactment of this Act.

(c) LIABILITY FOR WITHHELD TAXES.—

(1) The amendments made by section 105 (a) (relating to effect on third parties) shall apply only with respect to wages paid on or after January 1, 1967.

(2) The amendments made by section 105 (b) (relating to performance bonds of contractors for public buildings or works) shall apply to contracts entered into pursuant to invitations for bids issued after June 30, 1967.

(d) Civil Action To Clear Title to Property.—If, before the date of enactment of this Act, any person has commenced a civil action to clear title to property pursuant to section 7424 of the Internal Revenue Code of 1954 as in effect immediately before the enactment of this Act, such action shall be determined in accordance with section 7424 of such Code as in effect immediately before the enactment of this Act.

TITLE II—CONSENT OF UNITED STATES TO BE SUED IN ACTIONS AFFECTING PROPERTY IN WHICH IT HAS A LIEN OR INTEREST

SEC. 201. JOINDER OF UNITED STATES IN CERTAIN PROCEEDINGS.

Section 2410 of title 28 of the United States Code is amended by redesignating subsection (d) as subsection (e) and by striking out subsections (a), (b), and (c) and inserting in lieu thereof the following new subsections:

"(a) Under the conditions prescribed in this section and section 1444 of this title for the protection of the United States, the United States may be named a party in any civil action or suit in any district court, or in any State court having jurisdiction of the subject matter—

"(1) to quiet title to,

"(2) to foreclose a mortgage or other lien upon,

"(3) to partition,

"(4) to condemn, or

"(5) of interpleader or in the nature of interpleader with respect to,

real or personal property on which the United States has or claims a mortgage or other lien.

"(b) The complaint or pleading shall set forth with particularity the nature of the interest or lien of the United States. In actions or suits involving liens arising under the internal revenue laws, the complaint or pleading shall include the name and address of the taxpayer whose liability created the lien and, if a notice of the tax lien was filed, the identity of the internal revenue office which filed the notice, and the date and place such notice of lien was filed. In actions in the State courts service upon the United States shall be made by serving the process of the court with a copy of the complaint upon the United States attorney for the district in which the action is brought or upon an assistant United States attorney or clerical employee designated by the United States attorney in writing filed with the clerk of the court in which the action is brought and by sending copies of the process and complaint, by registered mail, or by certified mail, to the Attorney General of the United States at Washington, District of Columbia. In such actions the United States may appear and

answer, plead or demur within sixty days after such service or such further time as the court may allow.

"(c) A judgment or decree in such action or suit shall have the same effect respecting the discharge of the property from the mortgage or other lien held by the United States as may be provided with respect to such matters by the local law of the place where the court is situated. However, an action to foreclose a mortgage or other lien, naming the United States as a party under this section, must seek judicial sale. A sale to satisfy a lien inferior to one of the United States shall be made subject to and without disturbing the lien of the United States, unless the United States consents that the property may be sold free of its lien and the proceeds divided as the parties may be entitled. Where a sale of real estate is made to satisfy a lien prior to that of the United States, the United States shall have one year from the date of sale within which to redeem, except that with respect to a lien arising under the internal revenue laws the period shall be 120 days or the period allowable for redemption under State law, whichever is longer, and in any case in which, under the provisions of section 505 of the Housing Act of 1950, as amended (12 U.S.C. 1701k), and subsection (d) of section 1820 of title 38 of the United States Code, the right to redeem does not arise, there shall be no right of redemption. In any case where the debt

owing the United States is due, the United States may ask by way of affirmative relief, for the foreclosure of its own lien and where property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of its claim with expenses of sale, as may be directed by the head (or his delegate) of the department or agency of the United States which has charge of the administration of the laws in respect to which the claim of the United States arises.

"(d) In any case in which the United States redeems real property under this section or section 7425 of the Internal Revenue Code of 1954, the amount to be paid for such property shall be the sum of—

"(1) the actual amount paid by the purchaser at such sale (which, in the case of a purchaser who is the holder of the lien being foreclosed, shall include the amount of the obligation secured by such lien to the extent satisfied by reason of such sale),

"(2) interest on the amount paid (as determined under paragraph (1)) at 6 percent per annum from the date of such sale, and

"(3) the amount (if any) equal to the excess of (A) the expenses necessarily incurred in connection with such property, over (B) the income from such

property plus (to the extent such property is used by the purchaser) a reasonable rental value of such property."

SEC. 202. JURISDICTION AND VENUE IN CERTAIN ACTIONS AGAINST UNITED STATES.

(a) JURISDICTION IN PROCEEDINGS BROUGHT BY THIRD PARTIES.—Section 1346 of title 28 of the United States Code is amended by adding at the end thereof the following new subsection:

"(e) The district courts shall have original jurisdiction of any civil action against the United States provided in section 7426 of the Internal Revenue Code of 1954."

(b) VENUE IN PROCEEDINGS BROUGHT BY THIRD PARTIES.—Section 1402 of title 28 of the United States Code is amended by adding at the end thereof the following new subsection:

"(c) Any civil action against the United States under subsection (e) of section 1346 of this title may be prosecuted only in the judicial district where the property is situated at the time of levy, or if no levy is made, in the judicial district in which the event occurred which gave rise to the cause of action."

SEC. 203. EFFECTIVE DATE.

The amendments made by this title shall apply after the date of the enactment of this Act.

Passed the House of Representatives September 12, 1966.

Attest: RALPH R. ROBERTS,

Clerk.

SECTION 12

BILL AS REPORTED BY THE SENATE COMMITTEE ON FINANCE

Calendar No. 1676

89TH CONGRESS
2D SESSION

H. R. 11256

[Report No. 1708]

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 15 (legislative day, SEPTEMBER 7), 1966

Read twice and referred to the Committee on Finance

OCTOBER 11, 1966

Reported, under authority of the order of the Senate of October 11, 1966, by Mr. LONG of Louisiana, with amendments

[Omit the part struck through and insert the part printed in italic]

AN ACT

To amend the Internal Revenue Code of 1954 with respect to the priority and effect of Federal tax liens and levies, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE, ETC.

(a) SHORT TITLE.—This Act may be cited as the "Federal Tax Lien Act of 1966".

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall

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be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

TITLE I—PRIORITY AND EFFECT OF TAX LIENS AND LEVIES

SEC. 101. PRIORITY OF LIENS.

(a) AMENDMENT OF SECTION 6323.—Section 6323 (relating to validity of tax liens against mortgagees, pledgees, purchasers, and judgment creditors) is amended to read as follows:

"SEC. 6323. VALIDITY AND PRIORITY AGAINST CERTAIN PERSONS.

"(a) PURCHASERS, HOLDERS OF SECURITY INTERESTS, MECHANIC'S LIENORS, AND JUDGMENT LIEN CREDITORS.—The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary or his delegate.

"(b) PROTECTION FOR CERTAIN INTERESTS EVEN THOUGH NOTICE FILED.—Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid—

"(1) SECURITIES.—With respect to a security (as defined in subsection (h)(4))—

"(A) as against a purchaser of such security

who at the time of purchase did not have actual notice or knowledge of the existence of such lien; and

"(B) as against a holder of a security interest in such security who, at the time such interest came into existence, did not have actual notice or knowledge of the existence of such lien.

"(2) MOTOR VEHICLES.—With respect to a motor vehicle (as defined in subsection (h) (3)), as against a purchaser of such motor vehicle, if—

"(A) at the time of the purchase such purchaser did not have actual notice or knowledge of the existence of such lien, and

"(B) before the purchaser obtains such notice or knowledge, he has acquired possession of such motor vehicle and has not thereafter relinquished possession of such motor vehicle to the seller or his agent.

"(3) PERSONAL PROPERTY PURCHASED AT RETAIL.—With respect to tangible personal property purchased at retail, as against a purchaser in the ordinary course of the seller's trade or business, unless at the time of such purchase such purchaser intends such purchase to (or knows such purchase will) hinder, evade, or defeat the collection of any tax under this title.

"(4) PERSONAL PROPERTY PURCHASED IN CASUAL SALE.—With respect to household goods, personal effects, or other tangible personal property described in section 6334(a) purchased (not for resale) in a casual sale for less than $250, as against the purchaser, but only if such purchaser does not have actual notice or knowledge (A) of the existence of such lien, or (B) that this sale is one of a series of sales.

"(5) PERSONAL PROPERTY SUBJECT TO POSSESSORY LIEN.—With respect to tangible personal property subject to a lien under local law securing the reasonable price of the repair or improvement of such property, as against a holder of such a lien, if such holder is, and has been, continuously in possession of such property from the time such lien arose.

"(6) REAL PROPERTY TAX AND SPECIAL ASSESSMENT LIENS.—With respect to real property, as against a holder of a lien upon such property, if such lien is entitled under local law to priority over security interests in such property which are prior in time, and such lien secures payment of—

"(A) a tax of general application levied by any taxing authority based upon the value of such property;

"(B) a special assessment imposed directly

upon such property by any taxing authority, if such assessment is imposed for the purpose of defraying the cost of any public improvement; or

"(C) charges for utilities or public services furnished to such property by the United States, a State or political subdivision thereof, or an instrumentality of any one or more of the foregoing.

"(7) RESIDENTIAL PROPERTY SUBJECT TO A MECHANIC'S LIEN FOR CERTAIN REPAIRS AND IMPROVEMENTS.—With respect to real property subject to a lien for repair or improvement of a personal residence (containing not more than four dwelling units) occupied by the owner of such residence, as against a mechanic's lienor, but only if the contract price on the contract with the owner is not more than $1,000.

"(8) ATTORNEYS' LIENS.—With respect to a judgment or other amount in settlement of a claim or of a cause of action, as against an attorney who, under local law, holds a lien upon or a contract enforcible against such judgment or amount, to the extent of his reasonable compensation for obtaining such judgment or procuring such settlement, except that this paragraph shall not apply to any judgment or amount in settlement of a claim or of a cause of action against the United States to the extent that the United States offsets such judg-

ment or amount against any liability of the taxpayer to the United States.

"(9) CERTAIN INSURANCE CONTRACTS.—With respect to a life insurance, endowment, or annuity contract, as against the organization which is the insurer under such contract, at any time—

"(A) before such organization had actual notice or knowledge of the existence of such lien;

"(B) after such organization had such notice or knowledge, with respect to advances required to be made automatically to maintain such contract in force under an agreement entered into before such organization had such notice or knowledge; or

"(C) after satisfaction of a levy pursuant to section 6332 (b), unless and until the Secretary or his delegate delivers to such organization a notice, executed after the date of such satisfaction, of the existence of such lien.

"(10) PASSBOOK LOANS.—With respect to a savings deposit, share, or other account, evidenced by a passbook, with an institution described in section 581 or 591, to the extent of any loan made by such institution without actual notice or knowledge of the existence of such lien, as against such institution, if such loan is secured by such account and if such institution has been

continuously in possession of such passbook from the time the loan is made.

"(c) PROTECTION FOR CERTAIN COMMERCIAL TRANSACTIONS FINANCING AGREEMENTS, ETC.—

"(1) IN GENERAL.—To the extent provided in this subsection, even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing but which—

"(A) is in qualified property covered by the terms of a written agreement entered into before tax lien filing and constituting—

"(i) a commercial transactions financing agreement,

"(ii) a real property construction or improvement financing agreement, or

"(iii) an obligatory disbursement agreement, and

"(B) is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

"(2) COMMERCIAL TRANSACTIONS FINANCING AGREEMENT.—For purposes of this subsection—

"(A) DEFINITION.—The term 'commercial transactions financing agreement' means an agree-

ment (entered into by a person in the course of his trade or business)—

"(i) to make loans to the taxpayer to be secured by commercial financing security acquired by the taxpayer in the ordinary course of his trade or business, or

"(ii) to purchase commercial financing security (other than inventory) acquired by the taxpayer in the ordinary course of his trade or business;

but such an agreement shall be treated as coming within the term only to the extent that such loan or purchase is made before the 46th day after the date of tax lien filing or (if earlier) before the lender or purchaser had actual notice or knowledge of such tax lien filing.

"(B) LIMITATION ON QUALIFIED PROPERTY.—The term 'qualified property', when used with respect to a commercial transactions financing agreement, includes only commercial financing security acquired by the taxpayer before the 46th day after the date of tax lien filing.

"(C) COMMERCIAL FINANCING SECURITY DEFINED.—The term 'commercial financing security' means (i) paper of a kind ordinarily arising in

commercial transactions, (ii) accounts receivable, (iii) mortgages on real property, and (iv) inventory.

"(D) PURCHASER TREATED AS ACQUIRING SECURITY INTEREST.—A person who satisfies subparagraph (A) by reason of clause (ii) thereof shall be treated as having acquired a security interest in commercial financing security.

"(3) REAL PROPERTY CONSTRUCTION OR IMPROVEMENT FINANCING AGREEMENT.—For purposes of this subsection—

"(A) DEFINITION.—The term 'real property construction or improvement financing agreement' means an agreement to make cash disbursements to finance—

"(i) the construction or improvement of real property,

"(ii) a contract to construct or improve real property, or

"(iii) the raising or harvesting of a farm crop or the raising of livestock or other animals.

For purposes of clause (iii), the furnishing of goods and services shall be treated as the disbursement of cash.

"(B) LIMITATION ON QUALIFIED PROPERTY.—The term 'qualified property', when used with respect to a real property construction or improvement financing agreement, includes only—

"(i) in the case of subparagraph (A) (i), the real property with respect to which the construction or improvement has been or is to be made,

"(ii) in the case of subparagraph (A) (ii), the proceeds of the contract described therein, and

"(iii) in the case of subparagraph (A) (iii), property subject to the lien imposed by section 6321 at the time of tax lien filing and the crop or the livestock or other animals referred to in subparagraph (A) (iii).

"(4) OBLIGATORY DISBURSEMENT AGREEMENT.—For purposes of this subsection—

"(A) DEFINITION.—The term 'obligatory disbursement agreement' means an agreement (entered into by a person in the course of his trade or business) to make disbursements, but such an agreement shall be treated as coming within the term only to the extent of disbursements which are required to be

made by reason of the intervention of the rights of a person other than the taxpayer.

"(B) LIMITATION ON QUALIFIED PROPERTY.—The term 'qualified property', when used with respect to an obligatory disbursement agreement, means property subject to the lien imposed by section 6321 at the time of tax lien filing and (to the extent that the acquisition is directly traceable to the disbursements referred to in subparagraph (A)) property acquired by the taxpayer after tax lien filing.

"(C) SPECIAL RULES FOR SURETY AGREEMENTS.—Where the obligatory disbursement agreement is an agreement ensuring the performance of a contract between the taxpayer and another person—

"(i) the term 'qualified property' shall be treated as also including the proceeds of the contract the performance of which was ensured, and

"(ii) if the contract the performance of which was ensured was a contract to construct or improve real property, to produce goods, or to furnish services, the term 'qualified property' shall be treated as also including any tan-

gible personal property used by the taxpayer in the performance of such ensured contract.

"(d) 45-DAY PERIOD FOR MAKING DISBURSEMENTS.—Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing by reason of disbursements made before the 46th day after the date of tax lien filing, or (if earlier) before the person making such disbursements had actual notice or knowledge of tax lien filing, but only if such security interest—

"(1) is in property (A) subject, at the time of tax lien filing, to the lien imposed by section 6321, and (B) covered by the terms of a written agreement entered into before tax lien filing, and

"(2) is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

"(e) PRIORITY OF INTEREST AND EXPENSES.—If the lien imposed by section 6321 is not valid as against a lien or security interest, the priority of such lien or security interest shall extend to—

"(1) any interest or carrying charges upon the obligation secured,

"(2) the reasonable charges and expenses of an

indenture trustee or agent holding the security interest for the benefit of the holder of the security interest,

"(3) the reasonable expenses, including reasonable compensation for attorneys, actually incurred in collecting or enforcing the obligation secured,

"(4) the reasonable costs of insuring, preserving, or repairing the property to which the lien or security interest relates,

"(5) the reasonable costs of insuring payment of the obligation secured, and

"(6) amounts paid to satisfy any lien on the property to which the lien or security interest relates, but only if the lien so satisfied is entitled to priority over the lien imposed by section 6321,

to the extent that, under local law, any such item has the same priority as the lien or security interest to which it relates.

~~"(f) PLACE FOR FILING NOTICE; FORM.—The notice referred to in subsection (a) shall be filed—~~

~~"(1 UNDER STATE LAWS.—In the office designated by the law of the State in which the property subject to the lien is situated, whenever the State has by law designated an office within the State for the filing of such notice; or~~

~~"(2) WITH CLERK OF DISTRICT COURT.—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State has not by law designated an office within the State for the filing of such notice; or~~

~~"(3) WITH RECORDER OF DEEDS OF THE DISTRICT OF COLUMBIA.—In the office of the Recorder of Deeds of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.~~

~~If the notice filed pursuant to paragraph (1) is in such form as would be valid if filed with the clerk of the United States district court pursuant to paragraph (2), such notice shall be valid notwithstanding any law of the State regarding the form or content of a notice of lien.~~

"(f) PLACE FOR FILING NOTICE; FORM.—

"(1) PLACE FOR FILING.—The notice referred to in subsection (a) shall be filed—

"(A) UNDER STATE LAWS.—

"(i) REAL PROPERTY.—In the case of real property, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated; and

"(ii) PERSONAL PROPERTY.—*In the case of personal property, whether tangible or intangible, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated; or*

"(B) WITH CLERK OF DISTRICT COURT.—*In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State has not by law designated one office which meets the requirements of subparagraph (A); or*

"(C) WITH RECORDER OF DEEDS OF THE DISTRICT OF COLUMBIA.—*In the office of the Recorder of Deeds of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.*

"(2) SITUS OF PROPERTY SUBJECT TO LIEN.—*For purposes of paragraph (1), property shall be deemed to be situated—*

"(A) REAL PROPERTY.—*In the case of real property, at its physical location; or*

"(B) PERSONAL PROPERTY.—*In the case of personal property, whether tangible or intangible,*

at the residence of the taxpayer at the time the notice of lien is filed.

For purposes of paragraph (2)(B), the residence of a corporation or partnership shall be deemed to be the place at which the principal executive office of the business is located, and the residence of a taxpayer whose residence is without the United States shall be deemed to be in the District of Columbia.

"(3) FORM.—The form and content of the notice referred to in subsection (a) shall be prescribed by the Secretary or his delegate. Such notice shall be valid notwithstanding any other provision of law regarding the form or content of a notice of lien.

~~"(g) REFILING OF NOTICE.—~~

~~"(1) IN GENERAL.—For purposes of this section, unless notice of lien is refiled (in the office in which the prior notice was filed) during the required refiling period, such notice of lien shall be treated as filed on the date on which it is filed (in accordance with subsection (f)) after the expiration of such refiling period.~~

"(g) REFILING OF NOTICE.—For purposes of this section—

"(1) GENERAL RULE.—Unless notice of lien is refiled in the manner prescribed in paragraph (2) during the required refiling period, such notice of lien shall be

treated as filed on the date on which it is filed (in accordance with subsection (f)) after the expiration of such refiling period.

"(2) Place for filing.—A notice of lien refiled during the required refiling period shall be effective only—

"(A) if such notice of lien is refiled in the office in which the prior notice of lien was filed; and

"(B) in any case in which, 90 days or more prior to the date of a refiling of notice of lien under subparagraph (A), the Secretary or his delegate received written information (in the manner prescribed in regulations issued by the Secretary or his delegate) concerning a change in the taxpayer's residence, if a notice of such lien is also filed in accordance with subsection (f) in the State in which such residence is located.

"~~(2)~~ *(3)* Required refiling period.—In the case of any notice of lien, the term 'required refiling period' means—

"(A) the one-year period ending 30 days after the expiration of 6 years after the date of the assessment of the tax, and

"(B) the one-year period ending with the ex-

piration of 6 years after the close of the preceding required refiling period for such notice of lien.

"~~(3)~~ *(4)* TRANSITIONAL RULE.—Notwithstanding paragraph ~~(2)~~ *(3)*, if the assessment of the tax was made before January 1, 1962, the first required refiling period shall be the calendar year 1967.

"(h) DEFINITIONS.—For purposes of this section and section 6324—

"(1) SECURITY INTEREST.—The term 'security interest' means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time (A) if, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien arising out of an unsecured obligation, and (B) to the extent that, at such time, the holder has parted with money or money's worth.

"(2) MECHANIC'S LIENOR.—The term 'mechanic's lienor' means any person who under local law has a lien on real property (or on the proceeds of a contract relating to real property) for services, labor, or materials furnished in connection with the construction or improvement of such property. For purposes of the preceding sentence, a person has a lien on the earliest date such

lien becomes valid under local law against subsequent purchasers without actual notice, but not before he begins to furnish the services, labor, or materials.

"(3) MOTOR VEHICLE.—The term 'motor vehicle' means a self-propelled vehicle which is registered for highway use under the laws of any State or foreign country.

"(4) SECURITY.—The term 'security' means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by a corporation or a government or political subdivision thereof, with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

"(5) TAX LIEN FILING.—The term 'tax lien filing' means the filing of notice (referred to in subsection (a)) of the lien imposed by section 6321.

"(6) PURCHASER.—The term 'purchaser' means a person who, for adequate and full consideration in money or money's worth, acquires an interest (other than a lien or security interest) in property which is valid under local law against subsequent purchasers

without actual notice. In applying the preceding sentence for purposes of subsection (a) of this section, and for purposes of section 6324—

"(A) a lease of property,

"(B) a written executory contract to purchase or lease property,

"(C) an option to purchase or lease property or any interest therein, or

"(D) an option to renew or extend a lease of property,

which is not a lien or security interest shall be treated as an interest in property.

"(i) Special Rules.—

"(1) Actual notice or knowledge.—For purposes of this subchapter, an organization shall be deemed for purposes of a particular transaction to have actual notice or knowledge of any fact from the time such fact is brought to the attention of the individual conducting such transaction, and in any event from the time such fact would have been brought to such individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due

diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

"(2) SUBROGATION.—Where, under local law, one person is subrogated to the rights of another with respect to a lien or interest, such person shall be subrogated to such rights for purposes of any lien imposed by section 6321 or 6324.

"(3) DISCLOSURE OF AMOUNT OF OUTSTANDING LIEN.—If a notice of lien has been filed pursuant to subsection (f), the Secretary or his delegate is authorized to provide by regulations the extent to which, and the conditions under which, information as to the amount of the outstanding obligation secured by the lien may be disclosed."

(b) CLERICAL AMENDMENTS.—

(1) The table of sections for subchapter C of chapter 64 is amended by striking out

"Sec. 6323. Validity against mortgagees, pledgees, purchasers, and judgment creditors."

and inserting in lieu thereof

"Sec. 6323. Validity and priority against certain persons."

(2) Section 545 (b) (9) is amended by striking out "section 6323 (a) (1), (2), or (3)" and inserting in lieu thereof "section 6323 (f)".

SEC. 102. SPECIAL LIENS FOR ESTATE AND GIFT TAXES.

Section 6324 (relating to special liens for estate and gift taxes) is amended to read as follows:

"SEC. 6324. SPECIAL LIENS FOR ESTATE AND GIFT TAXES.

"(a) LIENS FOR ESTATE TAX.—Except as otherwise provided in subsection (c)—

"(1) UPON GROSS ESTATE.—Unless the estate tax imposed by chapter 11 is sooner paid in full, or becomes unenforceable by reason of lapse of time, it shall be a lien upon the gross estate of the decedent for 10 years from the date of death, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien.

"(2) LIABILITY OF TRANSFEREES AND OTHERS.—If the estate tax imposed by chapter 11 is not paid when due, then the spouse, transferee, trustee (except the trustee of an employees' trust which meets the requirements of section 401 (a)), surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or

beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042, inclusive, to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax. Any part of such property transferred by (or transferred by a transferee of) such spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary, to a purchaser or holder of a security interest shall be divested of the lien provided in paragraph (1) and a like lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary, or transferee of any such person, except any part transferred to a purchaser or a holder of a security interest.

"(3) CONTINUANCE AFTER DISCHARGE OF EXECUTOR.—The provisions of section 2204 (relating to discharge of executor from personal liability) shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless such part of the gross estate (or any interest therein) has been transferred to a purchaser or a holder of a security interest, in which case such part (or such interest) shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien

shall attach to the consideration received from such purchaser or holder of a security interest, by the heirs, legatees, devisees, or distributees.

"(b) Lien for Gift Tax.—Except as otherwise provided in subsection (c), unless the gift tax imposed by chapter 12 is sooner paid in full or becomes unenforceable by reason of lapse of time, such tax shall be a lien upon all gifts made during the calendar year, for 10 years from the date the gifts are made. If the tax is not paid when due, the donee of any gift shall be personally liable for such tax to the extent of the value of such gift. Any part of the property comprised in the gift transferred by the donee (or by a transferee of the donee) to a purchaser or holder of a security interest shall be divested of the lien imposed by this subsection and such lien, to the extent of the value of such gift, shall attach to all the property (including after-acquired property) of the donee (or the transferee) except any part transferred to a purchaser or holder of a security interest.

"(c) Exceptions.—

"(1) The lien imposed by subsection (a) or (b) shall not be valid as against a mechanic's lienor and, subject to the conditions provided by section 6323 (b) (relating to protection for certain interests even though noticed filed), shall not be valid with respect to any lien or interest described in section 6323 (b).

"(2) If a lien imposed by subsection (a) or (b) is not valid as against a lien or security interest, the priority of such lien or security interest shall extend to any item described in section 6323 (e) (relating to priority of interest and expenses) to the extent that, under local law, such item has the same priority as the lien or security interest to which it relates."

SEC. 103. CERTIFICATES RELATING TO LIENS.

(a) AMENDMENT OF SECTION 6325.—Section 6325 (relating to release of lien or partial discharge of property) is amended to read as follows:

"SEC. 6325. RELEASE OF LIEN OR DISCHARGE OF PROPERTY.

"(a) RELEASE OF LIEN.—Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of release of any lien imposed with respect to any internal revenue tax if—

"(1) LIABILITY SATISFIED OR UNENFORCEABLE.—The Secretary or his delegate finds that the liability for the amount assessed, together with all interest in respect thereof, has been fully satisfied or has become legally unenforceable; or

"(2) BOND ACCEPTED.—There is furnished to the Secretary or his delegate and accepted by him a bond

that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified by such regulations.

"(b) DISCHARGE OF PROPERTY.—

"(1) PROPERTY DOUBLE THE AMOUNT OF THE LIABILITY.—Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to any lien imposed under this chapter if the Secretary or his delegate finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the unsatisfied liability secured by such lien and the amount of all other liens upon such property which have priority over such lien.

"(2) PART PAYMENT; INTEREST OF UNITED STATES VALUELESS.—Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to the lien if—

"(A) there is paid over to the Secretary or his

delegate in partial satisfaction of the liability secured by the lien an amount determined by the Secretary or his delegate, which shall not be less than the value, as determined by the Secretary or his delegate, of the interest of the United States in the part to be so discharged, or

"(B) the Secretary or his delegate determines at any time that the interest of the United States in the part to be so discharged has no value.

In determining the value of the interest of the United States in the part to be so discharged, the Secretary or his delegate shall give consideration to the value of such part and to such liens thereon as have priority over the lien of the United States.

"(3) SUBSTITUTION OF PROCEEDS OF SALE.—Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to the lien if such part of the property is sold and, pursuant to an agreement with the Secretary or his delegate, the proceeds of such sale are to be held, as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as such liens and claims had with respect to the discharged property.

"(c) ESTATE OR GIFT TAX.—Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any or all of the property subject to any lien imposed by section 6324 if the Secretary or his delegate finds that the liability secured by such lien has been fully satisfied or provided for.

"(d) SUBORDINATION OF LIEN.—Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of subordination of any lien imposed by this chapter upon any part of the property subject to such lien if—

"(1) there is paid over to the Secretary or his delegate an amount equal to the amount of the lien or interest to which the certificate subordinates the lien of the United States, or

"(2) the Secretary or his delegate believes that the amount realizable by the United States from the property to which the certificate relates, or from any other property subject to the lien, will ultimately be increased by reason of the issuance of such certificate and that the ultimate collection of the tax liability will be facilitated by such subordination.

"(e) NONATTACHMENT OF LIEN.—If the Secretary or his delegate determines that, because of confusion of names

or otherwise, any person (other than the person against whom the tax was assessed) is or may be injured by the appearance that a notice of lien filed under section 6323 refers to such person, the Secretary or his delegate may issue a certificate that the lien does not attach to the property of such person.

"(f) EFFECT OF CERTIFICATE.—

"(1) CONCLUSIVENESS.—Except as provided in paragraphs (2) and (3), if a certificate is issued pursuant to this section by the Secretary or his delegate and is filed in the same office as the notice of lien to which it relates (if such notice of lien has been filed) such certificate shall have the following effect:

"(A) in the case of a certificate of release, such certificate shall be conclusive that the lien referred to in such certificate is extinguished;

"(B) in the case of a certificate of discharge, such certificate shall be conclusive that the property covered by such certificate is discharged from the lien;

"(C) in the case of a certificate of subordination, such certificate shall be conclusive that the lien or interest to which the lien of the United States is subordinated is superior to the lien of the United States; and

"(D) in the case of a certificate of nonattachment, such certificate shall be conclusive that the lien of the United States does not attach to the property of the person referred to in such certificate.

"(2) REVOCATION OF CERTIFICATE OF RELEASE OR NONATTACHMENT.—If the Secretary or his delegate determines that a certificate of release or nonattachment of a lien imposed by section 6321 was issued erroneously or improvidently, or if a certificate of release of such lien was issued pursuant to a collateral agreement entered into in connection with a compromise under section 7122 which has been breached, and if the period of limitation on collection after assessment has not expired, the Secretary or his delegate may revoke such certificate and reinstate the lien—

"(A) by mailing notice of such revocation to the person against whom the tax was assessed at his last known address, and

"(B) by filing notice of such revocation in the same office in which the notice of lien to which it relates was filed (if such notice of lien had been filed).

Such reinstated lien (i) shall be effective on the date notice of revocation is mailed to the taxpayer in accordance with the provisions of subparagraph (A), but not

earlier than the date on which any required filing of notice of revocation is filed in accordance with the provisions of subparagraph (B), and (ii) shall have the same force and effect (as of such date), until the expiration of the period of limitation on collection after assessment, as a lien imposed by section 6321 (relating to lien for taxes).

"(3) CERTIFICATES VOID UNDER CERTAIN CONDITIONS.—Notwithstanding any other provision of this subtitle, any lien imposed by this chapter shall attach to any property with respect to which a certificate of discharge has been issued if the person liable for the tax reacquires such property after such certificate has been issued.

"(g) FILING OF CERTIFICATES AND NOTICES.—If a certificate or notice issued pursuant to this section may not be filed in the office designated by State law in which the notice of lien imposed by section 6321 is filed, such certificate or notice shall be effective if filed in the office of the clerk of the United States district court for the judicial district in which such office is situated.

"(h) CROSS REFERENCE.—

"For provisions relating to bonds, see chapter 73 (sec. 7101 and following)."

(b) CLERICAL AMENDMENT.—The table of sections for

subchapter C of chapter 64 is amended by striking out

"Sec. 6325. Release of lien or partial discharge of property."

and inserting in lieu thereof

"Sec. 6325. Release of lien or discharge of property."

SEC. 104. SEIZURE OF PROPERTY FOR COLLECTION OF TAXES.

(a) Effect of Levy.—Section 6331 (b) (relating to seizure and sale of property by levy and distraint) is amended by inserting after the first sentence the following new sentence: "A levy shall extend only to property possessed and obligations existing at the time thereof."

(b) Surrender of Property Subject to Levy.—Section 6332 (relating to surrender of property subject to levy) is amended—

(1) by striking out "Any person" in subsection (a) and inserting in lieu thereof "Except as otherwise provided in subsection (b), any person";

(2) by amending subsection (b) to read as follows:

"(b) Special Rule for Life Insurance and Endowment Contracts.—

"(1) In general.—A levy on an organization with respect to a life insurance or endowment contract issued by such organization shall, without necessity for the surrender of the contract document, constitute a demand by the Secretary or his delegate for payment of

the amount described in paragraph (2) and the exercise of the right of the person against whom the tax is assessed to the advance of such amount. Such organization shall pay over such amount 90 days after service of notice of levy. Such notice shall include a certification by the Secretary or his delegate that a copy of such notice has been mailed to the person against whom the tax is assessed at his last known address.

"(2) SATISFACTION OF LEVY.—Such levy shall be deemed to be satisfied if such organization pays over to the Secretary or his delegate the amount which the person against whom the tax is assessed could have had advanced to him by such organization on the date prescribed in paragraph (1) for the satisfaction of such levy, increased by the amount of any advance (including contractual interest thereon) made to such person on or after the date such organization had actual notice or knowledge (within the meaning of section 6323 (i) (1)) of the existence of the lien with respect to which such levy is made, other than an advance (including contractual interest thereon) made automatically to maintain such contract in force under an agreement entered into before such organization had such notice or knowledge.

"(3) ENFORCEMENT PROCEEDINGS.—The satisfaction of a levy under paragraph (2) shall be without prejudice to any civil action for the enforcement of any lien imposed by this title with respect to such contract.";

(3) by redesignating subsection (c) as subsection (e); and

(4) by inserting after subsection (b) the following new subsections:

"(c) ENFORCEMENT OF LEVY.—

"(1) EXTENT OF PERSONAL LIABILITY.—Any person who fails or refuses to surrender any property or rights to property, subject to levy, upon demand by the Secretary or his delegate, shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of taxes for the collection of which such levy has been made, together with costs and interest on such sum at the rate of 6 percent per annum from the date of such levy. Any amount (other than costs) recovered under this paragraph shall be credited against the tax liability for the collection of which such levy was made.

"(2) PENALTY FOR VIOLATION.—In addition to the personal liability imposed by paragraph (1), if any

person required to surrender property or rights to property fails or refuses to surrender such property or rights to property without reasonable cause, such person shall be liable for a penalty equal to 50 percent of the amount recoverable under paragraph (1). No part of such penalty shall be credited against the tax liability for the collection of which such levy was made.

"(d) EFFECT OF HONORING LEVY.—Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the Secretary or his delegate, surrenders such property or rights to property (or discharges such obligation) to the Secretary or his delegate (or who pays a liability under subsection (c) (1)) shall be discharged from any obligation or liability to the delinquent taxpayer with respect to such property or rights to property arising from such surrender or payment. In the case of a levy which is satisfied pursuant to subsection (b), such organization shall also be discharged from any obligation or liability to any beneficiary arising from such surrender or payment."

(c) PROPERTY EXEMPT FROM LEVY.—Section 6334 (a) (relating to enumeration of property exempt from levy) is amended—

(1) by striking out "or Territory" in paragraph (4); and

(2) by adding at the end thereof the following new paragraphs:

"(6) CERTAIN ANNUITY AND PENSION PAYMENTS.—Annuity or pension payments under the Railroad Retirement Act, benefits under the Railroad Unemployment Insurance Act, speical pension payments received by a person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor roll (38 U.S.C. 562), and annuities based on retired or retainer pay under chapter 73 of title 10 of the United States Code.

"(7) WORKMEN'S COMPENSATION.—Any amount payable to an individual as workmen's compensation (including any portion thereof payable with respect to dependents) under a workmen's compensation law of the United States, any State, the District of Columbia, or the Commonwealth of Puerto Rico."

(d) PUBLICATION OF NOTICE OF SALE.—The first sentence of section 6335 (b) (relating to notice of sale of seized property) is amended to read as follows: "The Secretary or his delegate shall as soon as practicable after the seizure of the property give notice to the owner, in the manner prescribed in subsection (a), and shall cause a notification to be

published in some newspaper published or generally circulated within the county wherein such seizure is made, or, if there be no newspaper published or generally circulated in such county, shall post such notice at the post office nearest the place where the seizure is made, and in not less than two other public places."

(e) REDEMPTION PERIOD.—Paragraph (1) of section 6337 (b) (relating to period of redemption of real estate after sale) is amended by striking out "1 year" and inserting in lieu thereof "120 days".

(f) PREPARATION OF DEED.—Section 6338 (c) (relating to real property purchased by United States) is amended to read as follows:

"(c) REAL PROPERTY PURCHASED BY UNITED STATES.—If real property is declared purchased by the United States at a sale pursuant to section 6335, the Secretary or his delegate shall at the proper time execute a deed therefor, and without delay cause such deed to be duly recorded in the proper registry of deeds."

(g) DISCHARGE OF JUNIOR ENCUMBRANCES.—Section 6339 (relating to legal effect of certificate of sale of personal property and deed of real property) is amended by adding at the end thereof the following new subsections:

"(c) EFFECT OF JUNIOR ENCUMBRANCES.—A certificate of sale of personal property given or a deed to real

property executed pursuant to section 6338 shall discharge such property from all liens, encumbrances, and titles over which the lien of the United States with respect to which the levy was made had priority.

"(d) CROSS REFERENCES.—

"(1) For distribution of surplus proceeds, see section 6342(b).

"(2) For judicial procedure with respect to surplus proceeds, see section 7426(a)(2)."

(h) APPLICATION OF PROCEEDS OF LEVY AND SALE.—Subsection (a) of section 6342 (relating to collection of liability) is amended—

(1) by striking out so much thereof as precedes paragraph (1) and inserting in lieu thereof

"(a) COLLECTION OF LIABILITY.—Any money realized by proceedings under this subchapter (whether by seizure, by surrender under section 6332 (except pursuant to subsection (c)(2) thereof), or by sale of seized property) or by sale of property redeemed by the United States (if the interest of the United States in such property was a lien arising under the provisions of this title) shall be applied as follows:";

(2) by striking out "under this subchapter" in paragraph (1); and

(3) by adding "or the sale was conducted" after "levy was made" in paragraph (3).

(i) Return of Property.—Section 6343 (relating to authority to release levy) is amended—

(1) by striking out the heading of such section and inserting in lieu thereof the following:

"SEC. 6343. AUTHORITY TO RELEASE LEVY AND RETURN PROPERTY.";

(2) by striking out "It shall be" and inserting in lieu thereof "(a) Release of Levy.—It shall be"; and

(3) by adding at the end thereof the following new subsection:

"(b) Return of Property.—If the Secretary or his delegate determines that property has been wrongfully levied upon, it shall be lawful for the Secretary or his delegate to return—

"(1) the specific property levied upon,

"(2) an amount of money equal to the amount of money levied upon, or

"(3) an amount of money equal to the amount of money received by the United States from a sale of such property.

Property may be returned at any time. An amount equal to the amount of money levied upon or received from such sale may be returned at any time before the expiration of 9 months from the date of such levy. For purposes of para-

graph (3), if property is declared purchased by the United States at a sale pursuant to section 6335(e) (relating to manner and conditions of sale), the United States shall be treated as having received an amount of money equal to the minimum price determined pursuant to such section or (if larger) the amount received by the United States from the resale of such property."

(j) CLERICAL AMENDMENT.—The table of sections for subchapter D of chapter 64 is amended by striking out—

"Sec. 6343. Authority to release levy."

and inserting in lieu thereof

"Sec. 6343. Authority to release levy and return property."

SEC. 105. LIABILITY FOR WITHHELD TAXES.

(a) EFFECT ON THIRD PARTIES.—Chapter 25 (relating to general provisions relating to employment taxes) is amended by adding at the end thereof the following new section:

"SEC. 3505. LIABILITY OF THIRD PARTIES PAYING OR PROVIDING FOR WAGES.

"(a) DIRECT PAYMENT BY THIRD PARTIES.—For purposes of sections 3102, 3202, 3402, and 3403, if a lender, surety, or other person, who is not an employer under such sections with respect to an employee or group of employees, pays wages directly to such an employee or group of employees, employed by one or more employers, or to an agent

on behalf of such employee or employees, such lender, surety, or other person shall be liable in his own person and estate to the United States in a sum equal to the taxes (together with interest) required to be deducted and withheld from such wages by such employer.

"(b) PERSONAL LIABILITY WHERE FUNDS ARE SUPPLIED.—If a lender, surety, or other person supplies funds to or for the account of an employer for the specific purpose of paying wages of the employees of such employer, with actual notice or knowledge (within the meaning of section 6323 (i) (1)) that such employer does not intend to or will not be able to make timely payment or deposit of the amounts of tax required by this subtitle to be deducted and withheld by such employer from such wages, such lender, surety, or other person shall be liable in his own person and estate to the United States in a sum equal to the taxes (together with interest) which are not paid over to the United States by such employer with respect to such wages. However, the liability of such lender, surety, or other person shall be limited to an amount equal to 25 percent of the amount so supplied to or for the account of such employer for such purpose.

"(c) EFFECT OF PAYMENT.—Any amounts paid to the United States pursuant to this section shall be credited against the liability of the employer."

(b) Performance Bonds of Contractors for Public Buildings or Works.—The first section of the Act entitled "An Act requiring contracts for the construction, alteration, and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by an additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said public buildings or public work", approved August 24, 1935 (49 Stat. 793; 40 U.S.C. 270a), is amended by adding at the end thereof the following new subsection:

"(d) Every performance bond required under this section shall specifically provide coverage for taxes imposed by the United States which are collected, deducted, or withheld from wages paid by the contractor in carrying out the contract with respect to which such bond is furnished. However, the United States shall give the surety or sureties on such bond written notice, with respect to any such unpaid taxes attributable to any period, within ninety days after the date when such contractor files a return for such period, except that no such notice shall be given more than one hundred and eighty days from the date when a return for the period was required to be filed under the Internal Revenue Code of 1954. No suit on such bond for such taxes shall be commenced by the United States unless notice is given as pro-

vided in the preceding sentence, and no such suit shall be commenced after the expiration of one year after the day on which such notice is given."

(c) CLERICAL AMENDMENT.—The table of sections for chapter 25 is amended by adding at the end thereof the following:

"Sec. 3505. Liability of third parties paying or providing for wages."

SEC. 106. SUSPENSION OF RUNNING OF PERIOD OF LIMITATION.

(a) ASSETS OF ESTATE OF DECEDENT OR INCOMPETENT.—Section 6503 (b) (relating to assets of taxpayer in control or custody of court) is amended by striking out "(other than the estate of a decedent or of an incompetent)" and "or Territory".

(b) COLLECTION HINDERED BY ABSENCE OF TAXPAYER.—Section 6503 (c) (relating to location of property outside the United States or removal of property from the Unites States) is amended to read as follows:

"(c) TAXPAYER OUTSIDE UNITED STATES.—The running of the period of limitations on collection after assessment prescribed in section 6502 shall be suspended for the period during which the taxpayer is outside the United States if such period of absence is for a continuous period of at least 6 months. If the preceding sentence applies and at the

time of the taxpayer's return to the United States the period of limitations on collection after assessment prescribed in section 6502 would expire before the expiration of 6 months from the date of his return, such period shall not expire before the expiration of such 6 months."

(c) WRONGFUL SEIZURE OF PROPERTY OF THIRD PARTIES.—Section 6503 (relating to suspension of running of period of limitation) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) WRONGFUL SEIZURE OF PROPERTY OF THIRD PARTY.—The running of the period of limitations on collection after assessment prescribed in section 6502 shall be suspended for a period equal to the period from the date property (including money) of a third party is wrongfully seized or received by the Secretary or his delegate to the date the Secretary or his delegate returns property pursuant to section 6343 (b) or the date on which a judgment secured pursuant to section 7426 with respect to such property becomes final, and for 30 days thereafter. The running of the period of limitations on collection after assessment shall be suspended under this subsection only with respect to the amount of such assessment equal to the amount of money or the value of specific property returned."

SEC. 107. PROCEEDINGS WHERE UNITED STATES HAS TITLE TO PROPERTY.

(a) ACTION TO QUIET TITLE.—Section 7402 (relating to jurisdiction of district courts) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) TO QUIET TITLE.—The United States district courts shall have jurisdiction of any action brought by the United States to quiet title to property if the title claimed by the United States to such property was derived from enforcement of a lien under this title."

(b) SALE BIDS.—Section 7403(c) (relating to adjudication and decree) is amended by adding at the end thereof the following new sentence: "If the property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of such lien with expenses of sale, as the Secretary or his delegate directs."

SEC. 108. INTERVENTION BY UNITED STATES.

Section 7424 (relating to civil action to clear title to property) is amended to read as follows:

"SEC. 7424. INTERVENTION.

"If the United States is not a party to a civil action or suit, the United States may intervene in such action or suit

to assert any lien arising under this title on the property which is the subject of such action or suit. The provisions of section 2410 of title 28 of the United States Code (except subsection (b)) and of section 1444 of title 28 of the United States Code shall apply in any case in which the United States intervenes as if the United States had originally been named a defendant in such action or suit. In any case in which the application of the United States to intervene is denied, the adjudication in such civil action or suit shall have no effect upon such lien."

SEC. 109. DISCHARGE OF LIENS HELD BY UNITED STATES.

Subchapter B of chapter 76 (relating to proceedings by taxpayers) is amended by redesignating section 7425 as section 7427 and by inserting after section 7424 the following new section:

"SEC. 7425. DISCHARGE OF LIENS.

"(a) JUDICIAL PROCEEDINGS.—If the United States is not joined as a party, a judgment in any civil action or suit described in subsection (a) of section 2410 of title 28 of the United States Code, or a judicial sale pursuant to such a judgment, with respect to property on which the United States has or claims a lien under the provisions of this title—

"(1) shall be made subject to and without disturbing the lien of the United States, if notice of such lien

has been filed in the place provided by law for such filing at the time such action or suit is commenced, or

"(2) shall have the same effect with respect to the discharge or divestment of such lien of the United States as may be provided with respect to such matters by the local law of the place where such property is situated, if no notice of such lien has been filed in the place provided by law for such filing at the time such action or suit is commenced or if the law makes no provision for such filing.

If a judicial sale of property pursuant to a judgment in any civil action or suit to which the United States is not a party discharges a lien of the United States arising under the provisions of this title, the United States may claim, with the same priority as its lien had against the property sold, the proceeds (exclusive of costs) of such sale at any time before the distribution of such proceeds is ordered.

"(b) OTHER SALES.—Notwithstanding subsection (a), a sale of property on which the United States has or claims a lien, or a title derived from enforcement of a lien, under the provisions of this title, made pursuant to an instrument creating a lien on such property, pursuant to a confession of judgment on the obligation secured by such an instrument, or pursuant to a nonjudicial sale under a statutory lien on such property—

"(1) shall, except as otherwise provided, be made subject to and without disturbing such lien or title, if notice of such lien was filed or such title recorded in the place provided by law for such filing or recording more than 30 days before such sale and the United States is not given notice of such sale in the manner prescribed in subsection (c) (1); or

"(2) shall have the same effect with respect to the discharge or divestment of such lien or such title of the United States, as may be provided with respect to such matters by the local law of the place where such property is situated, if—

"(A) notice of such lien or such title was not filed or recorded in the place provided by law for such filing more than 30 days before such sale,

"(B) the law makes no provision for such filing, or

"(C) notice of such sale is given in the manner prescribed in subsection (c) (1).

"(c) Special Rules.—

"(1) Notice of sale.—Notice of a sale to which subsection (b) applies shall be given (in accordance with regulations prescribed by the Secretary or his delegate) in writing, by registered or certified mail or by personal

service, not less than 25 days prior to such sale, to the Secretary or his delegate.

"(2) CONSENT TO SALE.—Notwithstanding the notice requirement of subsection (b) (2) (C), a sale described in subsection (b) of property shall discharge or divest such property of the lien or title of the United States if the United States consents to the sale of such property free of such lien or title.

"(3) SALE OF PERISHABLE GOODS.—Notwithstanding the notice requirement of subsection (b) (2) (C), a sale described in subsection (b) of property liable to perish or become greatly reduced in price or value by keeping, or which cannot be kept without great expense, shall discharge or divest such property of the lien or title of the United States if notice of such sale is given (in accordance with regulations prescribed by the Secretary or his delegate) in writing, by registered or certified mail or by personal service, to the Secretary or his delegate before such sale. The proceeds (exclusive of costs) of such sale shall be held as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as such liens and claims had with respect to the property sold, for not less than 30 days after the date of such sale.

"(d) REDEMPTION BY UNITED STATES.—

"(1) RIGHT TO REDEEM.—In the case of a sale of real property to which subsection (b) applies to satisfy a lien prior to that of the United States, the Secretary or his delegate may redeem such property within the period of 120 days from the date of such sale or the period allowable for redemption under local law, whichever is longer.

"(2) AMOUNT TO BE PAID.—In any case in which the United States redeems real property pursuant to paragraph (1), the amount to be paid for such property shall be the amount prescribed by subsection (d) of section 2410 of title 28 of the United States Code.

"(3) CERTIFICATE OF REDEMPTION.—

"(A) IN GENERAL.—In any case in which real property is redeemed by the United States pursuant to this subsection, the Secretary or his delegate shall apply to the officer designated by local law, if any, for the documents necessary to evidence the fact of redemption and to record title to such property in the name of the United States. If no such officer is

designated by local law or if such officer fails to issue such documents, the Secretary or his delegate shall execute a certificate of redemption therefor.

"(B) FILING.—The Secretary or his delegate shall, without delay, cause such documents or certificate to be duly recorded in the proper registry of deeds. If the State in which the real property redeemed by the United States is situated has not by law designated an office in which such certificate may be recorded, the Secretary or his delegate shall file such certificate in the office of the clerk of the United States district court for the judicial district in which such property is situated.

"(C) EFFECT.—A certificate of redemption executed by the Secretary or his delegate shall constitute prima facie evidence of the regularity of such redemption and shall, when recorded, transfer to the United States all the rights, title, and interest in and to such property acquired by the person from whom the United States redeems such property by virtue of the sale of such property."

SEC. 110. PROCEEDINGS BY THIRD PARTIES AGAINST THE UNITED STATES.

(a) ACTIONS BY THIRD PARTIES.—Subchapter B of chapter 76 (relating to proceedings by taxpayers) is amended by inserting after section 7425 (as added by section 109 of this Act) the following new section:

"SEC. 7426. CIVIL ACTIONS BY PERSONS OTHER THAN TAXPAYERS.

"(a) ACTIONS PERMITTED.—

"(1) WRONGFUL LEVY.—If a levy has been made on property or property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property and that such property was wrongfully levied upon may bring a civil action against the United States in a district court of the United States. Such action may be brought without regard to whether such property has been surrendered to or sold by the Secretary or his delegate.

"(2) SURPLUS PROCEEDS.—If property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property junior to that of the United States and to be legally entitled to the surplus proceeds of such sale may

bring a civil action against the United States in a district court of the United States.

"(3) SUBSTITUTED SALE PROCEEDS.—If property has been sold pursuant to an agreement described in section 6325(b)(3) (relating to substitution of proceeds of sale), any person who claims to be legally entitled to all or any part of the amount held as a fund pursuant to such agreement may bring a civil action against the United States in a district court of the United States.

"(b) ADJUDICATION.—The district court shall have jurisdiction to grant only such of the following forms of relief as may be appropriate in the circumstances:

"(1) INJUNCTION.—If a levy or sale would irreparably injure rights in property which the court determines to be superior to rights of the United States in such property, the court may grant an injunction to prohibit the enforcement of such levy or to prohibit such sale.

"(2) RECOVERY OF PROPERTY.—If the court determines that such property has been wrongfully levied upon, the court may—

"(A) order the return of specific property if the United States is in possession of such property;

"(B) grant a judgment for the amount of money levied upon; or

"(C) grant a judgment for an amount not exceeding the amount received by the United States from the sale of such property.

For purposes of subparagraph (C), if the property was declared purchased by the United States at a sale pursuant to section 6335(e) (relating to manner and conditions of sale), the United States shall be treated as having received an amount equal to the minimum price determined pursuant to such section or (if larger) the amount received by the United States from the resale of such property.

"(3) Surplus proceeds.—If the court determines that the interest or lien of any party to an action under this section was transferred to the proceeds of a sale of such property, the court may grant a judgment in an amount equal to all or any part of the amount of the surplus proceeds of such sale.

"(4) Substituted sale proceeds.—If the court determines that a party has an interest in or lien on the amount held as a fund pursuant to an agreement described in section 6325(b)(3) (relating to substitution of proceeds of sale), the court may grant a judgment

in an amount equal to all or any part of the amount of such fund.

"(c) VALIDITY OF ASSESSMENT.—For purposes of an adjudication under this section, the assessment of tax upon which the interest or lien of the United States is based shall be conclusively presumed to be valid.

"(d) LIMITATION ON RIGHTS OF ACTION.—No action may be maintained against any officer or employee of the United States (or former officer or employee) or his personal representative with respect to any acts for which an action could be maintained under this section.

"(e) SUBSTITUTION OF UNITED STATES AS PARTY.—If an action, which could be brought against the United States under this section, is improperly brought against any officer or employee of the United States (or former officer or employee) or his personal representative, the court shall order, upon such terms as are just, that the pleadings be amended to substitute the United States as a party for such officer or employee as of the time such action was commenced upon proper service of process on the United States.

"(f) PROVISION INAPPLICABLE.—The provisions of section 7422(a) (relating to prohibition of suit prior to

filing claim for refund) shall not apply to actions under this section.

"(g) INTEREST.—Interest shall be allowed at the rate of 6 percent per annum—

"(1) in the case of a judgment pursuant to subsection (b)(2)(B), from the date the Secretary or his delegate receives the money wrongfully levied upon to the date of payment of such judgment; and

"(2) in the case of a judgment pursuant to subsection (b)(2)(C), from the date of the sale of the property wrongfully levied upon to the date of payment of such judgment.

"(h) CROSS REFERENCE.—

"For period of limitation, see section 6532(c)."

(b) PERIOD OF LIMITATION ON SUIT.—Section 6532 (relating to period of limitation on suits) is amended by adding at the end thereof the following new subsection:

"(c) SUITS BY PERSONS OTHER THAN TAXPAYERS.—

"(1) GENERAL RULE.—Except as provided by paragraph (2), no suit or proceeding under section 7426 shall be begun after the expiration of 9 months from the date of the levy or agreement giving rise to such action.

"(2) PERIOD WHEN CLAIM IS FILED.—If a request is made for the return of property described in section 6343(b), the 9-month period prescribed in paragraph

(1) shall be extended for a period of 12 months from the date of filing of such request or for a period of 6 months from the date of mailing by registered or certified mail by the Secretary or his delegate to the person making such request of a notice of disallowance of the part of the request to which the action relates, whichever is shorter."

(c) PROHIBITION OF SUITS TO RESTRAIN ASSESSMENT OR COLLECTION.—Section 7421 (a) (relating to prohibition of suits to restrain assessment or collection of tax) is amended to read as follows:

"(a) TAX.—Except as provided in sections 6212 (a) and (c), 6213 (a), and 7426 (a) and (b) (1), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed."

(d) CLERICAL AMENDMENTS.—

(1) The heading of subchapter B of chapter 76 is amended to read as follows:

"Subchapter B—Proceedings by Taxpayers and Third Parties"

(2) The table of sections for subchapter B of chapter 76 is amended by striking out

"Sec. 7424. Civil action to clear title to property.
"Sec. 7425. Cross references."

and inserting in lieu thereof

"Sec. 7424. Intervention.
"Sec. 7425. Discharge of liens.
"Sec. 7426. Civil actions by persons other than taxpayers.
"Sec. 7427. Cross references."

(3) The table of subchapters for chapter 76 is amended by striking out

"SUBCHAPTER B. Proceedings by Taxpayers."

and inserting in lieu thereof

"SUBCHAPTER B. Proceedings by Taxpayers and Third Parties."

SEC. 111. SALE OF PROPERTY ACQUIRED BY UNITED STATES.

(a) PERSONAL PROPERTY ACQUIRED.—Section 7505 (a) (relating to sale of personal property purchased by the United States) is amended by striking out "purchased by the United States under the authority of section 6335 (e) (relating to purchase for the account of the United States of property sold under levy)" and inserting in lieu thereof "acquired by the United States in payment of or as security for debts arising under the internal revenue laws".

(b) REAL PROPERTY REDEEMED.—Section 7506 (a) (relating to person charged with administration of real estate acquired by the United States) is amended by striking out "for the payment of such debts," and inserting in lieu thereof "for the payment of such debts, or which has been redeemed by the United States,".

(c) CLERICAL AMENDMENTS.—

(1) The heading of section 7505 is amended by striking out "PURCHASED" and inserting in lieu thereof "ACQUIRED";

(2) The table of sections for chapter 77 is amended by striking out

"Sec. 7505. Sale of personal property purchased by the United States."

and inserting in lieu thereof

"Sec. 7505. Sale of personal property acquired by the United States."

SEC. 112. FUND FOR REDEMPTION OF REAL PROPERTY BY UNITED STATES.

(a) CREATION OF FUND FOR REDEMPTION OF REAL PROPERTY.—Subchapter A of chapter 80 (relating to application of internal revenue laws) is amended by adding at the end thereof the following new section:

"SEC. 7810. REVOLVING FUND FOR REDEMPTION OF REAL PROPERTY.

"(a) ESTABLISHMENT OF FUND.—There is established a revolving fund, under the control of the Secretary or his delegate, which shall be available without fiscal year limitation for all expenses necessary for the redemption (by the Secretary or his delegate) of real property as provided in section 7425(d) and section 2410 of title 28 of the United

States Code. There are authorized to be appropriated from time to time such sums (not to exceed $1,000,000 in the aggregate) as may be necessary to carry out the purposes of this section.

"(b) REIMBURSEMENT OF FUND.—The fund shall be reimbursed from the proceeds of a subsequent sale of real property redeemed by the United States in an amount equal to the amount expended out of such fund for such redemption.

"(c) SYSTEM OF ACCOUNTS.—The Secretary or his delegate shall maintain an adequate system of accounts for such fund and prepare annual reports on the basis of such accounts."

(b) DEPOSIT OF MONEY RECEIVED.—Section 7809 (relating to deposit of collections) is amended by striking out "and 7654," in subsection (a) and inserting in lieu thereof "7654, and 7810,"; and by amending subsection (b)—

(1) by striking out "and" at the end of paragraph (2),

(2) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and", and

(3) by inserting after paragraph (3) the following new paragraph:

"(4) SURPLUS PROCEEDS IN SALES OF REDEEMED PROPERTY.—Surplus proceeds in any sale

under section 7506 of real property redeemed by the United States, after making allowance for the amount of the tax, interest, penalties, and additions thereto, and for the costs of sale."

(c) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 80 is amended by adding at the end thereof the following:

"Sec. 7810. Revolving fund for redemption of real property."

SEC. 113. EFFECT OF JUDGMENT ON TAX LIEN AND LEVY.

(a) LIEN NOT MERGED IN JUDGMENT.—Section 6322 (relating to period of lien) is amended by inserting after "liability for the amount so assessed" the following: "(or a judgment against the taxpayer arising out of such liability)".

(b) LEVY.—Section 6502(a) (relating to length of period for collection after assessment) is amended by adding at the end thereof the following new sentence: "The period provided by this subsection during which a tax may be collected by levy shall not be extended or curtailed by reason of a judgment against the taxpayer."

SEC. 114. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as otherwise provided, the amendments made by this title shall apply after the date of enactment of this Act, regardless of when a lien or a title of the United States arose or when the lien or interest of any other person was acquired.

(b) Exceptions.—The amendments made by this title shall not apply in any case—

(1) in which a lien or a title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before the date of enactment of this Act; or

(2) in which such amendments would—

(A) impair a priority enjoyed by any person (other than the United States) holding a lien or interest prior to the date of enactment of this Act;

(B) operate to increase the liability of any such person; or

(C) shorten the time for bringing suit with respect to transactions occurring before the date of enactment of this Act.

(c) Liability for Withheld Taxes.—

(1) The amendments made by section 105 (a) (relating to effect on third parties) shall apply only with respect to wages paid on or after January 1, 1967.

(2) The amendments made by section 105 (b) (relating to performance bonds of contractors for public buildings or works) shall apply to contracts entered into pursuant to invitations for bids issued after June 30, 1967.

(d) CIVIL ACTION TO CLEAR TITLE TO PROPERTY.—If, before the date of enactment of this Act, any person has commenced a civil action to clear title to property pursuant to section 7424 of the Internal Revenue Code of 1954 as in effect immediately before the enactment of this Act, such action shall be determined in accordance with section 7424 of such Code as in effect immediately before the enactment of this Act.

TITLE II—CONSENT OF UNITED STATES TO BE SUED IN ACTIONS AFFECTING PROPERTY IN WHICH IT HAS A LIEN OR INTEREST

SEC. 201. JOINDER OF UNITED STATES IN CERTAIN PROCEEDINGS.

Section 2410 of title 28 of the United States Code is amended by redesignating subsection (d) as subsection (e) and by striking out subsections (a), (b), and (c) and inserting in lieu thereof the following new subsections:

"(a) Under the conditions prescribed in this section and section 1444 of this title for the protection of the United States, the United States may be named a party in any civil action or suit in any district court, or in any State court having jurisdiction of the subject matter—

"(1) to quiet title to,

"(2) to foreclose a mortgage or other lien upon,

"(3) to partition,

"(4) to condemn, or

"(5) of interpleader or in the nature of interpleader with respect to,

real or personal property on which the United States has or claims a mortgage or other lien.

"(b) The complaint or pleading shall set forth with particularity the nature of the interest or lien of the United States. In actions or suits involving liens arising under the internal revenue laws, the complaint or pleading shall include the name and address of the taxpayer whose liability created the lien and, if a notice of the tax lien was filed, the identity of the internal revenue office which filed the notice, and the date and place such notice of lien was filed. In actions in the State courts service upon the United States shall be made by serving the process of the court with a copy of the complaint upon the United States attorney for the district in which the action is brought or upon an assistant United States attorney or clerical employee designated by the United States attorney in writing filed with the clerk of the court in which the action is brought and by sending copies of the process and complaint, by registered mail, or by certified mail, to the Attorney General of the United States at Washington, District of Columbia. In such actions the United States may appear and

answer, plead or demur within sixty days after such service or such further time as the court may allow.

"(c) A judgment or decree in such action or suit shall have the same effect respecting the discharge of the property from the mortgage or other lien held by the United States as may be provided with respect to such matters by the local law of the place where the court is situated. However, an action to foreclose a mortgage or other lien, naming the United States as a party under this section, must seek judicial sale. A sale to satisfy a lien inferior to one of the United States shall be made subject to and without disturbing the lien of the United States, unless the United States consents that the property may be sold free of its lien and the proceeds divided as the parties may be entitled. Where a sale of real estate is made to satisfy a lien prior to that of the United States, the United States shall have one year from the date of sale within which to redeem, except that with respect to a lien arising under the internal revenue laws the period shall be 120 days or the period allowable for redemption under State law, whichever is longer, and in any case in which, under the provisions of section 505 of the Housing Act of 1950, as amended (12 U.S.C. 1701k), and subsection (d) of section 1820 of title 38 of the United States Code, the right to redeem does not arise, there shall

be no right of redemption. In any case where the debt owing the United States is due, the United States may ask, by way of affirmative relief, for the foreclosure of its own lien and where property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of its claim with expenses of sale, as may be directed by the head (or his delegate) of the department or agency of the United States which has charge of the administration of the laws in respect to which the claim of the United States arises.

"(d) In any case in which the United States redeems real property under this section or section 7425 of the Internal Revenue Code of 1954, the amount to be paid for such property shall be the sum of—

"(1) the actual amount paid by the purchaser at such sale (which, in the case of a purchaser who is the holder of the lien being foreclosed, shall include the amount of the obligation secured by such lien to the extent satisfied by reason of such sale),

"(2) interest on the amount paid (as determined under paragraph (1)) at 6 percent per annum from the date of such sale, and

"(3) the amount (if any) equal to the excess of (A) the expenses necessarily incurred in connection with such property, over (B) the income from such

property plus (to the extent such property is used by the purchaser) a reasonable rental value of such property."

SEC. 202. JURISDICTION AND VENUE IN CERTAIN ACTIONS AGAINST UNITED STATES.

(a) JURISDICTION IN PROCEEDINGS BROUGHT BY THIRD PARTIES.—Section 1346 of title 28 of the United States Code is amended by adding at the end thereof the following new subsection:

"(e) The district courts shall have original jurisdiction of any civil action against the United States provided in section 7426 of the Internal Revenue Code of 1954."

(b) VENUE IN PROCEEDINGS BROUGHT BY THIRD PARTIES.—Section 1402 of title 28 of the United States Code is amended by adding at the end thereof the following new subsection:

"(c) Any civil action against the United States under subsection (e) of section 1346 of this title may be prosecuted only in the judicial district where the property is situated at the time of levy, or if no levy is made, in the judicial district in which the event occurred which gave rise to the cause of action."

SEC. 203. EFFECTIVE DATE.

The amendments made by this title shall apply after the date of the enactment of this Act.

Passed the House of Representatives September 12, 1966.

Attest: RALPH R. ROBERTS,
Clerk.

SECTION 13
COMMITTEE REPORT

Calendar No. 1676

89TH CONGRESS, 2d Session } SENATE { REPORT No. 1708

FEDERAL TAX LIEN ACT OF 1966

REPORT

OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

TO ACCOMPANY

H.R. 11256

A BILL TO AMEND THE INTERNAL REVENUE CODE OF 1954 WITH RESPECT TO THE PRIORITY AND EFFECT OF FEDERAL TAX LIENS AND LEVIES

OCTOBER 11, 1966.—Ordered to be printed

Reported under authority of the order of the Senate of October 11, 1966

U.S. GOVERNMENT PRINTING OFFICE
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89TH CONGRESS 2d Session } SENATE { REPORT No. 1708

FEDERAL TAX LIEN ACT OF 1966

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Mr. LONG of Louisiana, from the Committee on Finance, submitted the following

REPORT

[To accompany H.R. 11256]

The Committee on Finance, to which was referred the bill (H.R. 11256) to amend the Internal Revenue Code of 1954 with respect to the priority and effect of Federal tax liens and levies, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

I. GENERAL STATEMENT

The bill as reported by your Committee makes one amendment to the bill as passed by the House. This amendment is with respect to the place of filing (and of refiling, discussed in A.6 and A.7 below) notice of a tax lien.

The Federal Tax Lien bill of 1966 represents the first comprehensive revision and modernization of the provisions of the internal revenue laws concerned with the relationship of Federal tax liens to the interests of other creditors.

Since the adoption of the Federal income tax in 1913, the nature of commercial financial transactions has changed appreciably. Business practices have been substantially revised and, as a result, many new types of secured transactions have been developed. In an attempt to take into account these changed commercial transactions, and to secure greater uniformity among the several States, a Uniform Commercial Code was promulgated somewhat over 10 years ago by the American Law Institute and the National Conference of Commissioners on Uniform State Laws. A revised version of this code is already law in over 40 States and could well be adopted by many of the remaining States in the near future. Under the Commercial Code, priority now is afforded new types of commercial secured creditors not previously protected.

This bill is in part an attempt to conform the lien provisions of the internal revenue laws to the concepts developed in this Uniform Commercial Code. It represents an effort to adjust the provisions in the internal revenue laws relating to the collection of taxes of delinquent persons to the more recent developments in commercial practice (permitted and protected under State law) and to deal with a multitude of technical problems which have arisen over the past 50 years. The bill represents the culmination of a project initiated approximately 10 years ago by those concerned with the relationship of the tax lien provisions to the interests of other creditors. Since that time, the suggestions and ideas of various groups have been studied and analyzed carefully, both by the groups themselves and by the staffs of the Treasury Department and the congressional committees.

Under present law, a lien for Federal taxes arises when a taxpayer's liability is assessed. The lien attaches to all of the property he then holds or subsequently acquires. The assessment is made when the unpaid tax liability is entered on the appropriate records of the Internal Revenue Service—which occurs, in the case of a taxpayer who voluntarily shows the tax liability on his return, shortly after the time the return is filed. Although the lien arises on the date of assessment, present law provides that purchasers and certain categories of secured creditors are given priority over the tax lien up to the time a notice of the tax lien is filed in the appropriate local office as designated by State law. Mortgagees, pledgees, purchasers, and judgment lien creditors are given this priority status. In addition, in the case of securities and motor vehicles, present law provides that even a filed Federal tax lien is not generally to be effective as against a purchaser or a mortgagee or pledgee of securities or a purchaser of motor vehicles.

This bill substantially improves the status of private secured creditors. This is accomplished, first, by expanding the categories of creditors protected as against a nonfiled tax lien to include a mechanic's lienor.

Second, various types of secured creditor interests already having, or given, priority status over tax liens are specifically defined, and it is provided that where those interests qualify under the definitions they are to be accorded this priority status whether or not they are in all other respects definite and complete at the time notice of the tax lien is filed.

Third, the bill adds to the "superpriority" status accorded to certain interests in securities and motor vehicles an additional eight categories of interests in properties which are to be effective as against a tax lien, even though notice of the lien has been filed.

Fourth, a priority status is provided for interests arising under three types of financing agreements entered into before the tax lien filing—commercial transactions financing, real property construction or improvement financing, and obligatory disbursements—even though the funds are advanced or the property comes into existence after the tax lien filing. In the case of commercial transactions financing, the protection generally is afforded even though the property underlying the lien is not yet in existence or is turned over within a short time (45 days) after the tax lien filing as long as the loan or purchase is made within this time. In the absence of this grace period, commercial factors and other lenders would have to check on a daily basis to see if a tax lien is filed to protect their interests. Interests arising under

the real property construction and improvement financing agreements are protected even though loans are made after the tax lien filing because the construction is expected to enhance the value of the property underlying the tax lien. Interests arising under an obligatory disbursement agreement are protected because a person is obliged under a preexisting agreement to make disbursements after a tax lien filing and someone other than the taxpayer has relied on this obligation.

Fifth, a limited type of priority is given by the bill with respect to two other categories. In the case of security interests, generally, protection is afforded for a period of up to 45 days after the filing of notice of a tax lien. Also, interest paid with respect to interests having priority over a Federal tax lien and costs of preserving property subject to interests having priority over a tax lien are given a priority over tax liens even though notice has been filed (where these items have the same priority as principal debt under State law).

In addition to dealing with the relative priority of creditors' interests as against Federal tax liens, the bill also makes numerous modifications in the provisions of the internal revenue laws dealing with the procedures to be followed in collecting the taxes of a delinquent person. In general terms, these modifications are intended to represent a reasonable accommodation of the interests of the Government in collecting the taxes of delinquent taxpayers with the rights of the taxpayers and third parties. The modifications are concerned with the procedures for levying upon property of a delinquent taxpayer, the liability of lenders, sureties, etc., for withholding taxes, the running of the statute of limitations in the case of delinquent tax liabilities, procedures arising out of, or with respect to the sale of property of delinquent taxpayers, the court procedures to be followed with respect to tax liens, and provision for the redemption of real property by the United States, where it is sold by a creditor with a higher priority.

The Treasury Department urges the adoption of this bill.

II. GENERAL EXPLANATION

A. PRIORITY OF LIENS (SEC. 101 OF THE BILL AND SEC. 6323 OF THE CODE)

(1) Interests having priority over tax liens (sec. 6323(a) of the code)

The Federal tax lien arises at the time a tax is assessed. However, present law lists certain categories of persons, whose interests arise after the Federal tax lien but before the Internal Revenue Service files a notice of the lien, who are given priority over the tax lien.

Under the bill, persons to be accorded priority over a tax lien include purchasers, judgment lien creditors, mechanic's lienors, and holders of security interests. Purchasers and judgment creditors (which has been interpreted as meaning judgment "lien" creditors), as well as mortgagees and pledgees (which under the bill are included as holders of security interests), already have this priority status under present law. The inclusion of mechanic's lienors expands somewhat the categories protected under present law. The definition of the term "purchaser" makes clear that a purchaser who has not taken title to, or fully paid for, property is protected. The substitution of "holder of a security interest" for "mortgagee" and "pledgee" replaces

the latter terms with a more general term used in the Uniform Commercial Code.[1] More important, however, it is intended that, under the bill, the various types of interests defined in this provision are to have a priority over a nonfiled Federal tax lien if they come within the definitions of these terms (discussed in No. 8 below), whether or not in all other regards they are definite and complete at the time notice of the tax lien is filed.

Although so-called purchase money mortgages are not specifically referred to under present law, it has generally been held that these interests are protected whenever they arise. This is based upon the concept that the taxpayer has acquired property or a right to property only to the extent that the value of the whole property or right exceeds the amount of the purchase money mortgage. This concept is not affected by the bill.

(2) "Superpriorities," or cases where tax lien is invalid even though notice filed (sec. 6323(b) of the code)

As previously indicated, present law provides that a Federal tax lien is not valid against holders of specified types of interests (those described in No. 1 above) unless notice of the lien is filed. In addition, in the case of securities and motor vehicles, present law provides that tax liens are not valid against purchasers of these forms of property and holders of certain interests in securities, even though notices of these liens are filed before the competing interests arise. These interests can be said to have "superpriorities." The bill retains these "superpriorities" for securities and motor vehicles and adds the following eight additional "superpriorities."

There may be some overlapping among categories of "superpriorities." In such cases, protection is to be granted if any category applies, even though another may also be relevant.

(*a*) *Retail purchases.*—Retail purchases of property presently are not protected against a prior filed tax lien. However, your committee believes it is unreasonable to expect the average purchaser from a retailer to go to the office of the county clerk or the Federal district court and search through the tax lien records merely to be sure that no prior tax lien has been recorded. While, in fact, the Internal Revenue Service rarely attempts to trace and claim this property after it is in the hands of individual purchasers, your committee sees no reason to have this potential liability hanging over these retail purchases. To remove this potential liability, the bill gives the purchaser of tangible personal property sold at retail in the ordinary course of the seller's trade or business a "superpriority" unless the purchaser intends the transaction to, or knows that it will, interfere with the collection of Federal internal revenue taxes.

(*b*) *Casual sales.*—A second new category of superpriority relates to casual sales. As readers of newspaper classified columns can testify, many items are sold by their owners at casual sales, often on the owners' premises. Under present law, a Federal tax lien which has attached to property follows the property, and if a notice of lien is properly filed, the lien takes precedence over the rights of a subsequent bona fide purchaser, even in the case of a casual sale. Your committee has been informed that, as a practical matter, the Internal Revenue Service rarely proceeds against the purchaser unless the item involved has sub-

[1] See Uniform Commercial Code, sec. 9-310, regarding mechanic's lienors. Compare the definition of "security interest" in Uniform Commercial Code, sec. 1-201(37).

stantial value. The decision as to when to proceed against a purchaser varies from case to case based upon the view of the collector of the probable costs of the collection proceedings as against the value expected to be realized by the Internal Revenue Service upon the sale of the property seized. As in the case of retail sales, your committee believes it is unreasonable to require a casual purchaser to examine the tax records before making a relatively small purchase. As a result, your committee has decided to provide statutory protection to the purchaser of property in the case of a casual sale if the sale price is less than $250 and if the property is the type which would be exempt from levy. The principal types of property in this category are household goods, personal effects, books and tools of a business, wearing apparel, schoolbooks, etc. However, this protection is not provided for a purchaser who is a dealer, or a purchaser who has actual notice or knowledge (defined in the bill and discussed in No. 8 below) of the existence of the Federal tax lien, or a purchaser who knows that the sale is one of a series. The purchaser who is a dealer does not represent the type of sale intended to be covered by this provision. Nor is it intended to cover a purchaser who specifically knows of the tax lien at the time of his purchase. Similarly, the provision does not cover a purchase where the purchaser knows that it is one of a series of sales since, in such cases, the series of sales itself may be an indication that the seller is having credit problems. By providing this superpriority for casual sales up to a $250 limit, your committee does not intend that the Internal Revenue Service follow casual sales into the hands of the purchaser where the amount is larger if, in the absence of this provision, the Service for administrative or other reasons would not do so.

(*c*) *Possessory liens.*—The bill adds a third new category protecting a repairman against a filed Federal tax lien in certain cases. This is only true where local law gives a repairman (or similar person) holding continuous possession of tangible personal property a lien in order to secure payment of the repairman's charge for repairing or improving the property. In this case the repairman is protected against the Federal tax lien regardless of whether he knows of the Federal tax lien before undertaking the work, since his work can be expected to enhance the value of the property by his labor and, as a result, the value of the Federal tax lien. This superpriority is limited to the reasonable price of the job. This provision is intended to enable repairmen to undertake their work without burdening them with the duty of searching tax lien records.

(*d*) *Real property taxes and special assessments.*—A fourth new category of superpriority is provided for real property taxes and special assessments. As a practical matter, real property taxes and special assessments imposed by local governmental authorities presently limit the value of the security real property affords to Federal tax liens. This occurs because a purchaser cannot take the property free of these local liens. Consequently, any tax sale purchaser could be expected to take into account in his bid any outstanding local property taxes and special assessments. This situation is recognized in the bill and priority is given to these taxes and assessments even as against a filed Federal tax lien. However, the priority is provided only where local law gives similar priority to real property taxes and assessments as against holders of security interests. "Assessment" is used here in

the general sense of local law (not in the more limited sense usually employed in the tax lien provisions of the Internal Revenue Code).

(*e*) *Small repairs and improvements.*—A fifth new category of superpriority is made available for improvements and small repairs of real property. Your committee believes that it is unreasonable to expect construction workers or contractors to search for filed tax liens prior to undertaking small repair and improvement work. The basis for providing this priority is much the same as that in the case of a repairman having a possessory lien. It is believed that such a person should be permitted to rely upon the authority of an owner, who occupies his own residence, to contract for reasonable repairs and improvements to that residence without fear that his mechanic's lien will be defeated by a preexisting tax lien. Here, too, the work is likely to add to the value of the property and, therefore, increase the Government's chances of collection.

As a result, the bill grants protection against a Federal tax lien, even where notice has been filed, in situations where the applicable local law grants a mechanic's lien. However, to limit the protection to those situations where it is clearly unreasonable to expect a search for tax liens before work is undertaken, it is required that the real property involved contain not more than four dwelling units and be occupied by the owner of the residence, and that the contract price for the entire repair or improvement be not more than $1,000.

(*f*) *Attorneys' liens.*—A sixth new category of superpriority added by the bill relates to attorneys' fees. Federal tax liens cover all of a taxpayer's property, including causes of action and any amounts which may be owed to him under judgments or settlements of suits or other proceedings. It is believed that attorneys whose efforts result in obtaining or collecting judgments or settlements should be protected as to their reasonable fees to the extent that the fees are protected under local law. An attorney's fee in such a case can be thought of as similar in concept to the repairman's charge in that it can be expected to enhance the value of the taxpayer's property. Moreover, as in the case of a possessory lien, the efforts of the attorney may account for the realization of value by the taxpayer from the judgment or settlement. However, under the bill, in a proceeding against the Government, the Government retains its right to set off against any recoveries from it any amounts due it by the taxpayer on account of any tax or any other debt or claim. This setoff means that the attorney's lien superpriority does not apply with respect to judgments he obtains for the taxpayer against the Government.

(*g*) *Certain insurance contracts.*—A seventh new type of superpriority is provided in the case of certain insurance contracts. The bill provides that filed tax liens are not to be valid in the case of life insurance, endowment, or annuity contracts as against the insurance company carrying the contract where any of three conditions exist. First, priority is given to the insurance company where it makes a loan on the policy, even though a notice of tax lien has previously been filed, as long as the company has no actual notice or knowledge of the lien at the time the loan is made. This makes it unnecessary for an insurance company to check when a policy loan is made to see that notice of a tax lien has not been filed. Second, priority is given to the insurance company even where it has notice or knowledge of the filing of notice of a tax lien, but only with respect to automatic premium loans (including interest) required by preexisting contract to be made to

maintain the insurance in force. Where there is a preexisting agreement, it appears appropriate to give recognition to the loans made to keep the policy in effect in determining the priority status of tax liens. Third, once there is a tax levy on an insurance contract and the levy is satisfied, the insurance company is to have priority for any subsequent policy loans until the Treasury Department delivers to the insurance company a new notification of tax lien on the policy. This is to avoid the necessity of an insurance company having to check on whether the tax liability has in the meanwhile been paid in each case where there previously has been a levy on the policy.

(*h*) *Passbook loans.*—An eighth new superpriority is provided for passbook loans. Under present law, when a taxpayer who has a savings account in a bank or building and loan association presents his passbook for a withdrawal, the bank or association may pay out the entire amount of the account without incurring any liability with respect to any outstanding lien of the taxpayer of which it has no notice or knowledge. Since a bank or association is permitted to pay out the entire account in this way without regard to the status of any tax lien on the property, your committee has concluded that it is also appropriate to accord this same status to a passbook loan—a loan secured by the taxpayer's account at the lending institution. However, the bill protects a bank or institution with regard to a passbook loan only to the extent that the loan is secured by an account with the bank or association and where the institution, in fact, retains the passbook in its possession until the loan is completely paid off. This protection is available only for passbook loans made before the bank or association obtains actual notice or knowledge of the existence of the tax lien. Where a passbook loan is made before this knowledge and the bank or association subsequently obtains knowledge, this protection is not to attach to any additional loans made after the knowledge is acquired, even if the bank continues to retain the passbook from the preceding, protected, passbook loan.

(3) *Interests under commercial transactions financing agreement, etc., coming into existence after tax lien filing* (*sec. 6323*(*c*) *of the code*)

In addition to the interests which are protected when they arise after the assessment of a tax but before tax lien filing (those of purchasers, holders of security interests, mechanic's lienors and judgment lien creditors), and the superpriorities, discussed above, which are protected even though they arise after tax lien filing, the bill provides priority for certain other interests. It provides that security interests arising under commercial transactions financing agreements, real property construction or improvement financing agreements, and obligatory disbursing agreements entered into before tax lien filing in certain cases are to be protected against Federal tax liens, even though the funds are advanced under the agreement, or the property referred to in the agreement comes into existence, after the tax lien filing.

The priority over filed tax liens for advances made after, or with respect to property coming into existence after, the filing of a tax lien is to occur only if local law gives priority in such cases. This protection under local law must be provided against a judgment lien creditor as of the time of the tax lien filing for the priority to be available.

(*a*) *Commercial transactions financing agreement.*—As indicated above, protection as against a filed tax lien is provided for a security interest arising out of three different types of agreements. The first

of these is a commercial transactions financing agreement. This is an agreement, entered into in the ordinary course of the lender's trade or business, to make a loan secured by commercial financing security or to purchase commercial financing security (other than inventory), but protection is afforded only where the loan or purchase is made not later than 45 days after the tax lien filing (unless actual notice or knowledge of the filing is obtained sooner) and only where the inventory, accounts receivable, etc., are acquired before the 45 days have elapsed.

Commercial financing security is defined as accounts receivable, mortgages on real property, inventory, and paper of a kind ordinarily arising in commercial transactions.

In the case of inventory and accounts receivable financing, it is customary for a business, after establishing a line of credit, to receive advances from time to time as its needs arise. The security in such a case customarily is the inventory, accounts receivable, etc., which the business receives from time to time in the ordinary course of its business. The loan may be secured by these assets (including replacements of the initial assets) or these assets themselves (except inventory) may be sold to the financier. Under present law, a filed tax lien has priority over the rights of the lender or purchaser if the funds are not advanced, or the security purchased, until after the tax lien filing. In addition, it has priority under present law if the initial assets are replaced with assets acquired after the tax lien filing. As a result, under present law for a lender or purchaser to be sure that no tax lien has recently been filed, he must search the records each time before making an additional advance or purchase. The provision added by the bill is designed to keep this obligation within practical bounds by giving the interests arising under the agreements providing for these loans or purchases priority over a filed tax lien if the loans or purchases are made not later than 45 days after the tax lien filing and before the lender or purchaser has actual notice of the filing. In this regard it should be noted that the standard of perfection (i.e., validity against judgment liens) in this regard is the same for a purchaser (including a bona fide purchaser) as it is for the holder of a security interest. This provision thus generally gives an inventory or accounts receivable, etc., financier assurance that his loans or purchases are not inferior to some recently filed tax lien as long as he searches the records at least once every 45 days.

(*b*) *Real property construction or improvement financing agreement.*—A second type of interest given priority over a filed tax lien is an interest arising under a real property construction or improvement financing agreement. In this case, also, the interest is given priority over a filed tax lien even though the cash disbursements involved are made after filing, but in this case without regard to whether the disbursements occur within 45 days of the tax lien filing. The types of financing agreement covered are generally those involving disbursements to an owner of a property for the construction or improvement of real property, or to a builder for a contract to construct or improve real property, as well as disbursements for the raising or harvesting of farm crops or the raising of livestock or other animals. Protection is limited to interests arising from cash disbursements by the lender except in the case of the financing of a farm crop, livestock, or other animals, where the disbursement may also be in the form of the supplying of goods or services.

Your committee's bill gives priority in the case of security interests arising from disbursements for these purposes even though a notice of a tax lien has been filed because (as in the case of some of the superpriority categories) the disbursements generally enhance the value of the property for purposes of the tax lien. Thus, the completion of the construction or the improvement of the property or the completion of the raising of the crop or livestock usually increases the value of the property underlying the security interest for tax lien purposes by more than the amount of the disbursement being accorded the priority.

(*c*) *Obligatory disbursement agreement.*—The third category of interest given priority over a filed tax lien is that arising from an obligatory disbursement agreement. This is an agreement entered into by a person under which he is obliged to make disbursements because someone other than the taxpayer has relied on his obligation. An example is an irrevocable letter of credit where a bank issuing the letter must honor a demand for payment by a third party who advances credit in reliance upon the letter. This also covers cases where a surety agrees to finance the completion of a contract entered into by the taxpayer. In these cases no limitation is placed on the time during which a disbursement may be made as long as the person is obligated to do so at the time of the tax lien filing by a written agreement. As a result, if an effort is made to foreclose on a Federal tax lien before all of the potential obligations under an obligatory disbursement contract are met, these potential obligatory disbursements are given priority over the Federal tax lien. In such a case an amount sufficient to cover the potential obligations usually is set aside and used for these obligations. Only after these obligations have been met is any remainder available to satisfy the liability secured by the Federal tax lien.

Your committee's bill gives priority to interests arising under obligatory disbursement agreements as against filed tax liens since the obligation arises before the filing of the tax lien, although the disbursements are made after that time. Interests arising under these agreements are given priority over a filed tax lien only if the agreements are entered into by the disburser in the ordinary course of his trade or business. As a result, this provision does not apply in the case of accommodation endorsers to the extent the accommodation is not incidental to the operation of a trade or business. The priority over the tax lien in these cases also applies only to the extent of the property on hand at the time of tax lien filing (and put up as security) and property traceable to the obligatory disbursements. Thus, if a bank issues a line of credit to allow a taxpayer to finance the purchase of specified property and, subsequently, must make this disbursement, priority as against the tax lien is given only with respect to the property pledged and the specific property purchased and other property directly traceable to funds obtained from the sale of this specific property.

(*4*) *45-day period for the disbursements with respect to security interests generally (sec. 6323(d) of the code)*

In addition to the priorities previously discussed, the bill also provides priority generally with respect to security interests in property held by the taxpayer before the tax lien filing which arise as a result of disbursements made within a period of up to 45 days after the filing of a tax lien (unless actual notice or knowledge of the filing is sooner

obtained). However, for the priority to exist in such cases there must be a written agreement entered into before the tax lien filing and the security interest must be protected under local law against a judgment lien arising as of the time of the tax lien filing. The protection provided here, as in the case of the commercial transactions financing agreements, is designed to make it unnecessary for the holder of the security interest to search the records more often than once every 45 days where one or more disbursements are to be made by him.

(5) Priority of interest and expenses (sec. 6323(e) of the code)

The bill also provides a priority over filed tax liens for interest with respect to, and certain other costs of preserving property underlying, a lien or security interest which is superior to a Federal tax lien. For this priority to exist, however, local law must also provide this interest or expense the same priority as the lien or security interest to which it relates. The types of items referred to here are—

(1) Interest or carrying charges (including finance and service charges) on the obligation secured by a lien or security interest;

(2) Reasonable expenses of an indenture trustee (such as a trustee under a deed of trust) or agent holding a secuirty interest;

(3) Reasonable expenses incurred in collecting and enforcing a secured obligation (including reasonable attorney's fees);

(4) Reasonable costs of insuring, preserving, or repairing the property subject to the lien or security interest;

(5) Reasonable costs of insuring payment of the obligation secured (such as mortgage insurance); and

(6) Amounts paid by the holder of a lien or security interest to satisfy another lien on the property where this other lien has priority over the Federal tax lien.

These interest charges and expenses arise out of a lien or security interest having priority over the Federal tax lien, and your committee believes that, although they are not fully determinable as of the time notice of the Federal tax lien is filed, nevertheless, they should be given priority since they relate to a lien or security interest having such a priority.

(6) Place of filing notice (sec. 6323(f) of the code)

The bill as reported by your committee makes a change in the bill as passed by the House with respect to the place of filing notice of a Federal tax lien. The House bill made no change in present law in this regard. Your committee has made an amendment, contained in the bill as it was originally introduced in the House, designed to clarify existing law and to increase the likelihood that creditors, generally, will receive notice as to taxpayers' standing with the Government. It should be noted in considering this point that in anticipation of the enactment of this amendment, your committee understands that many States are planning to enact a uniform act for filing notice of tax liens.

Under present law, for notice of a tax lien to be effective, it must be filed in the office designated by the law of the State where the property subject to the lien is situated. Where the State has not designated an appropriate office, notice of the lien is required to be filed with the clerk of the Federal district court. In the latter case, too, the place

of filing is determined by where the property subject to the lien is deemed to be situated.

The Internal Revenue Service takes the position that real property is situated where it is physically located. On this point there is no dispute. There is some dispute, however, as to where personal property, both tangible and intangible, is situated. The Service takes the position that as to both types of personal property, the domicile of the taxpayer determines the situs of the property. It further takes the position that, under existing law, a State may designate only one office for filing of notice of tax liens. Thus, the Service contends that as to the personal property of a taxpayer, notice of a Federal tax lien is valid as against all persons when the notice is filed in one office designated by the laws of the State where the taxpayer is domiciled. If the State designates more than one office, the Service takes the position that it is as if the State did not designate any office, and thus that the place to file a notice of lien is with the clerk of the appropriate Federal district court.

In most cases the courts have sustained the Revenue Service's interpretation of existing law and have held that the filing of notice of a tax lien against personal property was valid when filed at a taxpayer's domicile. In some cases, however, the courts have held that a filing of notice was not valid with respect to a particular property of a taxpayer where the property was deemed to be situated elsewhere than at the taxpayer's domicile.[2] These conflicting authorities have created uncertainty not only for the Government but also for creditors, who, as a result, do not know where to look in order to determine if notice of a tax lien is on file.

The amendment made by your committee clarifies existing law by providing specific rules with respect to the place of filing a notice of a Federal tax lien against both real and personal property. As against real property, a notice of tax lien is to be filed in the one office designated by the State where the property is physically located. As against (all types of) personal property, a notice of tax lien is to be filed in the one office designated by the State where the taxpayer resides. In either case, where the State designates more than one office, notice of the lien is to be filed with the appropriate Federal district court.

The amendment requires notice of a tax lien to be filed where a taxpayer resides, and not at his domicile, as presently contended by the Internal Revenue Service, because of the difficulty in determining a person's domicile, based as it is on (among other things) his state of mind. On the other hand, for purposes of determining the residence of corporations and partnerships, the amendment provides specific rules for determining their residence. Under the amendment, the residence of a corporation or a partnership is deemed to be the place at which its principal executive office is located. This is the most readily identifiable of all the offices that a business may maintain, appearing, as it does, on the annual reports filed with most States and on similar returns, and avoids the uncertainty of determining which of the many business offices that a taxpayer may maintain is its principal one.

[2] In some cases involving tangible personal property, this was because the physical location of the property was elsewhere. In other cases, involving intangible personal property, this was because the residence of the competing claimant (such as an insurer which made a policy loan) was elsewhere.

The amendment made by your committee also provides a rule for determining the residence of a taxpayer who resides out of the country. For purposes of filing a notice of tax lien, a taxpayer who resides abroad is deemed to reside in Washington, D.C. Thus, a notice of tax lien filed against his personal property is to be filed with the Recorder of Deeds for the District of Columbia.

(7) *Refiling of notice (sec. 6323(g) of the code)*

Public notice of the existence of a Federal tax lien is given under present law by the filing of a notice of the lien. As indicated previously, various interests may come ahead of a Federal tax lien if they arise before the filing of notice. Once the filing occurs, under present law the filing remains effective without any refiling of the notice. However, tax liens may expire, not only because the tax liability is satisfied, but also because they become unenforceable as a result of the running of the statute of limitations. Generally, the Federal Government has 6 years from the date of assessment to take action to collect the tax. As a result a potential creditor may well assume that if a notice of Federal tax lien indicates that the assessment occurred more than 6 years before his search of the records, he may then act safely on the assumption that the Federal tax lien is no longer enforceable. As a result, he may feel secure in accepting the taxpayer's property as good security for the extension of credit. However, the 6-year statute of limitations on the collection of a Federal tax after assessment may be extended by agreement with the taxpayer or where the running of the statute of limitations is suspended, such as where the taxpayer is out of the country for at least 6 months (this latter exception is a modification of present law discussed in F(2), below). As a result, it is not unusual for a tax lien to be valid for more than 6 years after it arises.

To remove this potential source of uncertainty for creditors, the bill as passed by the House provides that the Internal Revenue Service is to be required to refile its notice of lien in the same office where the original notice is filed within the 1-year period ending 30 days after the expiration of the 6-year period beginning with the date of assessment of the tax. This must recur every 6 years after the first required refiling where the lien continues for the lien to retain its priority. The failure to refile the tax lien at the appropriate time is not to affect the validity of the lien itself. However, it nullifies the effect of the prior filing of the notice of the tax lien. Any timely refiling of a tax lien, in effect, represents a continuation of the prior filing, but any late refiling of a tax lien, in effect, constitutes a new filing. As a result, in the case of a late refiling, any security interest arising after the prior filing of the tax lien, but before the refiling, obtains a priority to the same extent and under the same conditions as if no tax lien had been filed prior to the time of the late refiling.

Your committee has accepted the amendment made by the House requiring the refiling of notice of a Federal tax lien. Under your committee's bill, however, in addition to requiring refiling of notice of a tax lien in the same office where the original notice was filed, in those cases where a taxpayer has moved, the bill also requires refiling in the one office designated by the State where the taxpayer resides at the time of the required refiling. This additional refiling is required only where the Internal Revenue Service has received written notice (in the manner prescribed by regulation) concerning the taxpayer's

change of residence more than ninety days prior to the actual refiling. In this regard, your committee understands the regulations will provide that a written notice (such as a tax return, an amended tax return, or other written communication) is sufficient to advise the service of a change of address if the notice identifies the taxpayer and is with reference to the same type of tax out of which the lien arose.

(8) Definitions and special rules (sec. 6323 (h) and (i) of the code)

A number of terms relating to the provisions discussed to this point are defined in the bill. The more significant of these are discussed below.

(*a*) *Security interest.*—Under present law, mortgagees and pledgees are given priorities over tax liens, notices of which have not yet been filed. The bill, as previously indicated, applies this priority status to holders of a "security interest." A security interest is an interest in property acquired by contract for the purpose of securing payment or performance of an obligation or as indemnification against loss or liability. This term, which includes mortgagees and pledgees, is used to substantially conform the internal revenue laws in this respect to the terminology of the Uniform Commercial Code. It is intended that if a Federal tax lien is invalid against an initial holder of a security interest, it also is to be invalid to the same extent against any person who succeeds to the interest of the initial holder, whether by purchase or otherwise.

A security interest is considered as arising when the following conditions are met:

(1) the property [3] is in existence and the interest is protected under local law against a subsequent judgment lien arising out of an unsecured obligation; and

(2) to the extent the holder has parted with money or money's worth.[4]

For Federal tax purposes, a security interest is not considered as existing until the conditions set forth here are met even though local law may relate a security interest back to an earlier date and even though it might be an effective security interest as of the earlier date under the Uniform Commercial Code.

(*b*) *Mechanic's lienor.*—Under the bill a "mechanic's lienor" is a person who, under local law, has a lien on real property (or on the proceeds of a contract relating to real property) for furnishing services, labor, or materials in connection with the construction or improvement of the property. A mechanic is considered to have this lien under the bill as of the time the mechanic begins to furnish services, labor or materials, or, if later, the time when his lien is effective under local law. This protects mechanics under most State laws, where the mechanic's lien arises as of the time when the mechanic commences his labor or begins supplying material, even though he does not perfect his lien (such as by filing or by securing a judgment) until long after this time.

(*c*) *Purchaser.*—The bill adds a definition of "purchaser," a term which appears in present law but is not defined for purposes of the provisions relating to tax liens. A purchaser is defined as a person who, for adequate and full consideration in money or money's worth, ac-

[3] As to what constitutes "property," it is intended that what becomes a part of realty is to be determined by local law.

[4] This is intended to include money previously parted with if, under local law, past consideration is sufficient to support an agreement giving rise to a security interest.

quires an interest (other than a lien or security interest) in property which is valid under local law as against subsequent purchasers without actual notice. By requiring "adequate and full consideration," the bill modifies the results reached in court decisions under present law in that the amount paid can no longer be so small as to have little relation to the value of the property acquired. However, this requirement is not intended to preclude a bona fide bargain purchaser or a purchaser who has not completed performance of his obligation, such as the completion of his installment payments. The term "purchaser" as used here includes one who has acquired a lease of property, an executory contract to purchase or lease property, one who has an option to purchase or lease property or an interest in it, or one who has an option to renew or extend a lease on property if the interest acquired is not a lien or a security interest. Thus, for example, the holder of an option is not to lose the right to acquire the property at the option price.

(*d*) *Actual notice or knowledge.*—In a number of places in the bill, rights are made to depend upon whether or not a person has "actual notice or knowledge" of a certain fact. Your committee has adopted the Uniform Commercial Code definition of this concept (as revised in the proposed 1962 amendments to the Uniform Commercial Code). The burden is to be upon the Internal Revenue Service to show the existence of actual notice or knowledge, wherever actual notice or knowledge is material in determining the priority of a Federal tax lien versus a competing lien or interest.

(*e*) *Subrogation.*—If local law permits one person to acquire by substitution the rights of another with respect to any lien or interest dealt with here, then the person substituted is to stand in the shoes of the person he replaces with regard to Federal tax liens.

B. SPECIAL LIENS FOR ESTATE AND GIFT TAXES (SEC. 102 OF THE BILL AND SEC. 6324 OF THE CODE)

Present law (sec. 6321) provides that when a person liable to pay a Federal tax refuses or neglects to do so after demand, the amount of the tax (plus interest, penalties, etc.) is to constitute a lien against all his property. This applies to liabilities for all Federal taxes and is typically referred to as "the Federal tax lien." In addition, present law (sec. 6324) provides special liens for estate and gift taxes.

The bill amends the provision relating to the special liens for estate and gift taxes, first, to make it clear that these special liens are extinguished after the running of the period of limitations on the collection of the underlying estate or gift tax liability and, second, to extend to additional categories of interests the same protection against the special estate and gift tax liens which these interests are accorded by the bill in the case of the general tax lien.

Present law provides that unless the estate and gift taxes due are paid in full at an earlier date, they are to be a lien (without tax lien filing) for 10 years from the date of death, upon the gross estate of the decedent, or for 10 years from the time the gift is made, on all gifts made during the year. The bill adds a phrase in these provisions making it clear that these special liens are to terminate before the expiration of the 10 years at any time the estate or gift tax liability becomes unenforceable by reason of the running of the statute of limitations on collection (usually a 6-year period after assessment).

The bill also conforms in certain respects the special liens for estate and gift taxes to changes made by the bill in the general tax lien provisions. Under present law, property transferred from an estate to others may continue to be subject to the special tax lien if the estate tax has not been paid in full. In the case of gifts, the donee is personally liable for the gift tax, if not paid by the donor, to the extent of the value of the gift. However, in both of these cases, exceptions under present law are made for property transferred to purchasers, mortgagees, or pledgees. The bill substitutes "a holder of a security interest" for the references to "mortgagees" and "pledgees" (since this is the concept used in the general tax lien provision and also is the term used in the Uniform Commercial Code) and also defines the term "purchaser."

Under present law, the special liens for estate and gift taxes are not valid with respect to a security, as against a mortgagee, pledgee, or purchaser of the security for adequate and full consideration, if, at the time of the mortgage, pledge, or purchase, the mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of the liens. A similar exception is provided by present law in the case of purchasers of motor vehicles who are without notice or knowledge of the lien at the time of acquiring possession of the motor vehicle. In the discussion of the general tax lien above, the exceptions with respect to securities and motor vehicles are referred to as "superpriorities." In addition, in the case of the general tax lien, eight other categories of superpriorities are added by the bill. These eight categories are also added by the bill as exceptions in the case of the special liens for estate and gift taxes. An exception is also provided for a mechanic's lien and for interest and expenses attributable to a lien or security interest to the extent these interests or expenses under local law are treated as a part of the lien or security interest itself. Both the mechanic's lien and the priority for interest and expenses are the same exceptions as are provided by the bill with respect to the general tax lien provision.

C. CERTIFICATES OF RELEASE OF LIENS (SEC. 103 OF THE BILL AND SEC. 6325 OF THE CODE)

Present law provides the conditions under which a tax lien may be released and property may be discharged from the lien. The bill amends these provisions to provide new rules for the discharge of property, to authorize the subordination of tax liens in certain cases, to provide a procedure for the issuance of certificates of nonattachment of a tax lien, and to provide new rules relating to the legal effect of the various certificates issued under this provision.

(1) Discharge of property (sec. 6325(b) of the code)

Present law permits the Internal Revenue Service to issue a certificate of discharge of property subject to a Federal tax lien if (1) the fair market value of the property remaining subject to the lien is at least double the amount of the unsatisfied tax liability, or (2) the Internal Revenue Service is paid the value of the Government's interest in the property or determines that this interest has no value. In determining "value" for purposes of the latter rule, present law provides that "fair market value" is to be used. The bill substitutes the single word "value," so the Internal Revenue Service may take

into account "forced sale value," as well as other values, as an alternative to "fair market value," in appropriate cases.

The bill also authorizes the Internal Revenue Service to issue a certificate of discharge where property subject to a tax lien is sold and, under an agreement with the Internal Revenue Service, the proceeds from the sale are to be held as a fund subject to the liens and claims of the United States in the same manner, and with the same priority, as the liens and claims on the discharged property. This new procedure should aid in the disposition of property where a dispute exists among competing lienors, including the United States, concerning their rights to specific property.

(2) Subordination of lien (sec. 6325(d) of the code)

The bill adds a new provision authorizing the Internal Revenue Service to issue certificates subordinating a tax lien to another interest where there is paid over to the Internal Revenue Service an amount equal to the amount with respect to which the tax lien is subordinated. Certificates subordinating a tax lien to another interest may also be issued where the Internal Revenue Service believes that the subordination of the tax lien to another interest will ultimately result in an increase in the amount realized by the United States from the property subject to the lien and will aid in the collection of the tax liability.

Both of these rules permitting subordination of tax liens are designed to facilitate collection of delinquent tax liabilities by providing more flexible procedures. In the first case, since the tax lien is being subordinated only to the extent the United States receives, on a dollar-for-dollar basis, an equivalent amount, the U.S. interest cannot in any event be injured and a new procedure for collecting taxes is made available. Permitting a Federal tax lien to be subordinated to another interest where the Internal Revenue Service believes this will ultimately aid in the collection of the tax is designed to give the Service flexibility so that, for example, funds may be borrowed to increase the value of the property subject to the tax lien. This may occur, for example, in the case of a crop which needs harvesting and without which the tax lien of the Government has little or no value. It is intended that this authority will be used by the Service under conditions similar to those under which an ordinary, prudent businessman would subordinate his rights in a debtor's property in order to secure additional longrun benefits.

(3) Nonattachment of lien (sec. 6325(e) of the code)

The bill adds a new provision to the law codifying the present administrative practice of the Internal Revenue Service of issuing certificates of nonattachment of a tax lien on property where there has been confusion, such as because of the similarity of the name of an individual whose property is not subject to a tax lien and the name of an individual whose property is subject to a tax lien.

(4) Effect of, and procedures for filing, certificates (sec. 6325 (f) and (g) of the code)

Present law provides that where a certificate of release of a tax lien, or a certificate of discharge of property, is issued, the certificate is to be conclusive that the tax lien referred to is extinguished or that the property is discharged from the tax lien. The bill adds similar rules in the case of certificates of subordination and certificates of nonattachment, specifying that where these certificates are issued

they are conclusive that the lien or interest to which the tax lien is subordinated is superior to the tax lien, or that the lien does not attach to the property of the person referred to in the certificate.

The bill also makes provisions for the revocation of certificates of release or nonattachment in certain cases. It provides that these certificates may be revoked and the Federal tax lien reinstated where a certificate of release or nonattachment is issued erroneously or improvidently, or if the certificate of release is issued in connection with a compromise which has been breached (where the period of limitations on collection of the underlying tax liability has not expired). Where a certificate is revoked, the tax lien is reinstated and has the same effect as a new general tax lien.

The bill also provides that where a certificate of discharge has been issued, in these cases where the taxpayer disposes of property, if he subsequently reacquires the property, the certificate thereafter is to have no effect and the tax lien thereafter is to apply in the same way as in the case of after-acquired property generally.

Provision also is made in the bill to permit the public recording of all certificates and notices referred to above. If the certificate or notice may not be filed in the office designated by State law with respect to the notice of lien, it is to be filed in the office of the clerk of the appropriate U.S. district court.

D. SEIZURE OF PROPERTY FOR COLLECTION OF TAXES (SEC. 104 OF THE BILL AND SECS. 6331–6343 OF THE CODE)

Under present law, the Internal Revenue Service may levy upon the property of a delinquent taxpayer to collect the amount due. This levy may take the form of distraint and seizure by any means. Present law sets forth various procedures with respect to the levy, property exempt from the levy, the procedures to be followed in the case of the sale of seized property, and the application of the funds received from the sale. The bill makes a series of modifications in this levy procedure designed to remove both problems faced by the taxpayer and problems faced by the Government under current law. These are set forth below.

(1) *Effect of levy* (*sec 6331*(*b*) *of the code*)

In the provision of present law authorizing the Internal Revenue Service to levy upon the property of a taxpayer who owes delinquent taxes, the bill adds a sentence specifying that this right to levy extends only to property of the taxpayer and in the possession of the person on whom the levy is made, or obligations to the taxpayer of the person on whom the levy is made which are existing at the time of the levy. The bill intends to make it clear, for example, that if a levy is made upon the bank account of a delinquent taxpayer and the bank surrenders the balance in the account at the time the levy is made, this levy has no effect upon subsequent deposits made in the bank by the taxpayer. It is intended that these may be reached only by subsequent levies.

(2) *Life insurance and endowment contracts* (*sec. 6332*(*b*) *of the code*)

Under present law, when the Government seeks to collect a taxpayer's rights in a life insurance or endowment contract which has not matured, the Government must proceed by means of a foreclosure suit

against the taxpayer's total rights in the contract. This is necessary because the courts have held that to permit the Internal Revenue Service to seize the cash loan value of a policy without judicial foreclosure would, in effect, authorize it to alter an existing contractual arrangement between the taxpayer and the insurance company. However, a foreclosure suit has disadvantages both from the standpoint of the Government and the standpoint of the taxpayer. From the Government's point of view, a foreclosure suit is a cumbersome way of collecting the taxpayer's rights in the policy; from the taxpayer's point of view, such a suit is unfortunate because, when successful, it completely eliminates the insurance coverage. This is especially unfortunate if the insured becomes uninsurable between the time the policy is issued and the time of the tax lien foreclosure or if (because of greater age) the premium payments required for a new policy are substantially higher than for the old.

As an alternative procedure to the foreclosure suit, the bill permits the Government to levy against the cash loan value of the policy. This alternative procedure generally is more desirable both from the standpoint of the Government and from the standpoint of the insured. For the Government, this is an easier method of collection than a foreclosure suit. For the taxpayer, this makes it possible to continue the policy in force by transferring it to either a beneficiary or someone else who pays the subsequent premiums and interest on policy loans, including those loans resulting from the Government levy.

Under the new procedure set forth in the bill, where the Government levies on the cash loan value of the contract, the insurance company generally must pay this cash loan value over to the Government 90 days after the levy. However, the amount to be paid over is increased (above this cash loan value) for any advances made to the insured after the insurance company has actual notice or knowledge of the tax lien. An exception to this, however, is provided for advances made automatically to keep a policy in force; these need not be added to the payment where they are provided for in a contract entered into before the insurance company has notice or knowledge of the lien.

The 90-day period before the company is to pay the cash loan value (with any appropriate adjustments) to the Government allows a period of time for the insured to meet his tax liability by other means. In this regard, it is understood that a procedure is to be worked out whereby the Internal Revenue Service is to inform the insurance company before the end of the 90-day period of amounts received in payment of these tax liabilities during the interval.

Your committee believes that this new levy procedure with respect to the cash loan value of insurance policies will both facilitate Federal tax collections and, at the same time, aid delinquent taxpayers and their beneficiaries. Nevertheless, this alternative procedure is not intended to eliminate the Government's right to make use of foreclosure suits with respect to these policies where it still deems this appropriate or necessary.

(3) Enforcement of levy (sec. 6332(c) of the code)

Present law provides that a person who fails or refuses to surrender property levied upon is personally liable to the extent of the value of the property involved, or to the extent of the underlying tax liability, if less. Because this amount is designated as a "penalty," there is

some confusion as to whether an amount collected in this manner is properly credited against the tax liability of the person with respect to whom the levy is made.

The bill deletes the word "penalty" in the heading of this provision and adds specific language making it clear that the amount collected under this provision is to be credited against the delinquent tax liability. This makes it clear that an amount collected from the holder of the property under this provision is not a "penalty," but rather a collection of part or all of the tax liability.

However, your committee believes it appropriate to provide a penalty where the person fails or refuses to surrender property without reasonable cause. As a result, the bill provides for a civil penalty, equal to 50 percent of the amount recoverable, where the holder of the property fails or refuses to surrender it without reasonable cause. In this regard, it is intended that a bona fide dispute over the amount owing to the taxpayer (by the property holder) or over the legal effectiveness of the levy itself is to constitute reasonable cause under this provision.

(*4*) *Effect of honoring a levy* (*sec. 6332*(*d*) *of the code*)

The bill adds a new provision to the law making it clear that where a holder of property honors a levy with respect to a delinquent taxpayer and surrenders the property to the Government he is discharged from any obligation or liability to the taxpayer with respect to this property. This includes cases where the Government levies on property under an assessment which is incorrectly determined. The bill also provides that where an insurance company honors a levy with respect to a life insurance or endowment policy, the company is to be discharged to the extent of any obligation or liability, not only with respect to the insured or other owner, but also with respect to any beneficiary under the policy. Thus, the effect of honoring the levy is the same as honoring a demand of the taxpayer.

These new provisions are not intended to remove the liability of a property holder to a third party who owns the property where the holder mistakenly surrenders the property to the Internal Revenue Service. However, where there is a surrender of this property, there is provision for administrative relief, or the person involved may bring suit to recover the property.

(*5*) *Property exempt from levy* (*sec. 6334*(*a*) *of the code*)

Present law lists five types of property which, either in whole or in part, are exempt from levy for the collection of delinquent taxes. These categories include wearing apparel and school books; fuel provisions, furniture, and personal effects; books and tools of a business; unemployment benefits; and undelivered mail.

The bill adds two new categories of property exempt from levy. It exempts from levy annuity or pension payments under the Railroad Retirement Act, benefits under the Railroad Unemployment Insurance Act, pension payments received by those whose names are on the Medal of Honor Roll of the Army, Navy, Air Force, and Coast Guard, and annuities based upon retired or retainer pay paid under the retired serviceman's family protection plan. It also exempts from levy amounts paid as workmen's compensation (including amounts payable with respect to dependents) under the laws of the United States, any State, the District of Columbia, or Puerto Rico.

(6) Publication of notice of sale (sec. 6335(b) of the code)

Present law requires the Treasury Department to publish a notice of the sale of seized property in a newspaper published within the county where the property is seized. Because in recent years there has tended to be a reduction in the number of newspapers published in suburban and rural counties, it frequently happens that the only newspapers of wide circulation within these counties are those published outside of the counties in nearby metropolitan areas. To permit effective publicity to be given to tax sales in areas such as these, your committee's bill amends the law to provide, as an alternative to the present provision, that notice of these sales may be published in a newspaper generally circulated within the county in which the property is seized.

(7) Redemption of property by taxpayers (sec. 6337(b) of the code)

Where real property which is seized by the Government for delinquent taxes is sold, present law allows the owner (or others acting on his behalf) 1 year from time of sale to redeem the property by paying the purchaser the amount paid at the tax sale, plus interest of 20 percent per year.

While a reasonable period of time for redemption in these cases is desirable, nevertheless, such a long redemption period tends to unnecessarily depress the price which potential purchasers are willing to bid for property at these sales. Your committee's bill has, therefore, reduced by approximately two-thirds, or to 120 days, the period during which owners (or others acting on their behalf) may redeem their property sold at tax sales by the Government.

As is indicated subsequently, the same reduction in time is provided by the bill (in sec. 201) for the Government where it redeems real property on which it has a tax lien which has been sold in a foreclosure sale by a creditor whose interest is superior to that of the Government.

(8) Preparation of deed (sec. 6338(c) of the code)

Present lay provides that where real property is declared purchased by the United States at a tax sale, the Treasury Department is to execute a deed for the property "after its preparation and the endorsement of approval as to its form by the U.S. attorney for the district in which the property is situated." Then the Treasury Department is to have the deed duly recorded in the proper registry of deeds. The bill relieves the local U.S. attorneys of the requirement of preparing, and endorsing the form of, these deeds.

(9) Effect on junior encumbrances (sec. 6339 of the code)

Where, after a tax sale by the Government, a certificate of sale for personal property or a deed to real property is given, the courts have held that this discharges this property from all liens, encumbrances, and titles over which the tax lien has priority. Your committee's bill places this rule in the Internal Revenue Code.

(10) Application of proceeds of levy and sale (sec. 6342 of the code)

Present law provides that funds collected by levy and sale procedure are to be applied, first, to meet the expenses of the levy and sale; second, to meet the tax liability on the seized property; third, to meet the liability with respect to which the levy is made; and, finally, any surplus proceeds remaining are payable to the person legally entitled to them.

Although this provision presently relates only to amounts realized by the Government in connection with levy proceedings, subsequently in this bill, provision is made for the United States to rdeem real property in appropriate cases where other interests have priority and then to sell this property to third parties. Your committee's bill provides that funds realized by the Government from these sales to third parties are to be applied in the same manner as in the case of funds realized from levy proceedings.

(11) Return of property after wrongful levy (sec. 6343 of the code)

Under present law, the Treasury Department is authorized to release a levy upon property where it is determined that this action will facilitate the collection of the tax liability. The bill adds a provision dealing with cases where property has been wrongfully levied upon. This usually occurs where there has been a mistake as to the ownership of the property.

The bill provides that the Treasury Department, where it determines property has been wrongfully levied upon, may return either that specific property, an amount of money equal to the amount of money levied upon, or an amount of money equal to the amount received by the Government from the sale of the property.

Where specific property is returned, it may be returned at any time. Where money is returned, it is to be returned within 9 months after the date of the levy. In those cases where money is specifically identifiable (such as a coin collection which may be worth substantially more than its face value), it is contemplated that this money is to be treated as specific property and, wherever possible, this specific property is to be returned.

Where seized property has been declared sold to the United States, because no bidder at the sale is willing to meet the minimum price, then the minimum price is to be treated for purposes of this provision as the amount received from the sale. This is not intended, however, to prevent the return of the property itself, where it still is in the hands of the Government. Where the property is resold by the United States for greater than the minimum price, then the amount actually received from the resale (rather than the minimum price) is to be treated as the amount received in the initial tax sale.

E. LIABILITY OF LENDERS, ETC., FOR WITHHOLDING TAX (SEC. 105 OF THE BILL, SEC. 3505 OF THE CODE, AND SEC. 1 OF THE MILLER ACT; 49 STAT. 793)

(1) Liability where payments are made, or supplied, by lenders, etc. (sec. 3505 of the code)

Under present law, only "employers" are liable for income, social security, and railroad retirement taxes required to be withheld and deducted from wages. There are cases, however, where persons other than the employers directly, or indirectly, pay the wages. Where this occurs, problems have arisen because, in some instances, these other persons have paid employees only the "net" wages and have not paid, either to the employees or to the Government, the withholding taxes due the Government. Under current law in these cases the employees receiving the net wages receive credit for the taxes required to be withheld, whether or not the Government is paid

the amount of these taxes. While the employers in these cases are liable for the payment of the withholding taxes, they are likely to be without financial resources and, as a result, recourse against them may well be fruitless. Under current law, recourse cannot be taken against the third persons who directly or indirectly paid the net wages since they are not "employers" and, therefore, are not liable for the tax.

Your committee believes that where third persons finance employers' payrolls—subject to the conditions set forth below—they should be liable for the withholding taxes. It sees no reason for distinguishing between the portion of the total wages which is owed and should be paid to employees (the "net" wages), and the portion of the wages which is owed and should be paid to the Government in the form of withholding taxes. These taxes are, in reality, a portion of an employee's wages for which he is given credit in the computation of his own tax liability; the fact that this portion of the wages is payable directly to the Government does not alter its basic nature.

Third persons who pay wages directly to employees ordinarily have full access to payroll information and, therefore, have essentially the same ability to determine the amount of wages due, and control over the funds available for payment, as is usually true in the case of employers. Therefore, no administrative problems are expected in these cases by holding the third parties liable for withholding taxes.

Third parties who specifically finance payrolls, although not paying employees directly, also are often in a position similar to that of employers. This appears to be true in those cases where they have actual notice or knowledge that the employers do not intend to, or are unable to, pay the amount of withholding taxes due the Government. Therefore, in these cases also it would appear practical for these third parties to account for the withholding taxes to the Government.

For the reasons indicated above, your committee has added a new provision to the law making lenders liable for the payment of withholding taxes in the type of cases referred to above.

(*a*) *Liability where direct payments are made.*—Where a lender, surety, or other person directly pays wages to employees of another, the bill provides that he is to be personally liable for the withholding taxes, including not only income tax withholding, but also withholding for purposes of the social security and railroad retirement laws. The reference to "other person" in this provision is intended to include anyone similar to a lender or surety who pays the wages of employees of another out of his own funds; it is not intended to include a person who is acting only as agent of the employer or as agent of the employees (such as a union agent).

This provision does not relieve an employer from his responsibilities with respect to withholding taxes. His responsibilities continue, even though a lender, etc., may be paying his employees' wages. The liability of the lender in such a case is to pay the taxes only where the employer does not do so. Moreover, in any event, the employer is obligated to file an employer's tax return and comply with other requirements imposed on employers generally.

In those cases where a lender, etc., is required to pay to the Government withholding taxes, the Treasury Department is to provide appropriate schedules, forms, etc., where necessary, to assist him in determining the amount of his obligation. This is to include the

supplying of information necessary for the Government to determine on what employee's behalf the payments are being made.

A lender, etc., who pays withholding taxes as a result of this provision (who is not the "employer") is not liable for the employer's portion of payroll taxes.

(*b*) *Liability where a lender, etc., supplies funds to an employer for the purpose of paying wages.*—The bill provides that if two conditions exist, a lender, etc., is to be personally liable for any unpaid withholding taxes even though he does not himself directly pay the wages of employees of the employer (the borrower). First, for this to be true, the lender, etc., must know that the funds he advances are to be used specifically for the payment of wages. This does not include an ordinary working capital loan even though the lender, etc., knows that part of the funds may be used to make wage payments in the ordinary course of business. Second, for this provision to apply, the supplier of the funds must have actual notice or knowledge that the employer does not intend to, or will not be able to, make timely payment or deposit of the withholding taxes. The burden of establishing actual notice or knowledge in such cases is on the Government.

The liability of the lender, etc., under this provision may not in any event exceed 25 percent of the amount he supplies the employer for the specific purpose of paying wages. Where a supplier of funds is liable for withholding taxes under this provision, his liability (with the exception of the fact that the amount involved is limited to 25 percent of the funds supplied) is the same as that of a lender who pays the wages directly. He also is subject to the same requirements as to the furnishing of information, etc.

(c) *Effect of payment by lenders, etc.*—Under the bill, payments by the lender of withholding taxes reduces the liability of an employer. Similarly, payments by an employer of the withholding taxes reduces the liability of the lender, etc.

(*2*) *Bonds on public works contracts* (*sec. 1 of the Miller Act; 49 Stat. 793*)

In the cases discussed above, sureties can protect themselves against any losses attributable to withholding taxes by including this risk of liability in establishing their premiums, and lenders by their including the amounts in their loans and taking adequate security. Where they do so, losses now borne by the Government will fall (as it should) on the employers in the form of a larger bonding, or other fee or cost they must pay. Since the withholding taxes are, in true character, a part of the wages, it seems only appropriate that this cost be borne by the employers in the same manner as is true of the net wage costs. Because of this, your committee has concluded that, in the case of a contractor having a public works contract with the Federal Government, it is appropriate that the performance bond required by the Government specifically provide coverage for the withholding taxes payable by the contractor in carrying out the contract. The bill amends the Miller Act to achieve this result.

Under the bill, a surety is obligated to pay the withholding taxes only if the Government gives him a written notice of the contractor's failure to pay the taxes. Separate notices are required for each taxable period. The Government must give the surety notice of a contractor's failure to pay the withholding taxes within 90 days after the contractor files his return, or, if the contractor fails to file this

return, files it late, or obtains an extension of time for filing, the Government must in any event give the surety this notice within 180 days of the time the return was first required to be filed. In addition, the Government, if it is to bring suit for the failure on the part of the surety to pay the withholding taxes, must do so within 1 year of the time the notice is given to the surety of the unpaid tax liability.

F. SUSPENSION OF RUNNING OF PERIOD OF LIMITATION (SEC. 106 OF THE BILL AND SEC. 6503 OF THE CODE)

Generally, under present law, a tax may be collected by the levy procedure, previously discussed, or by a proceeding in court, at any time within 6 years after the assessment of the tax, or a longer period of time if agreed to by the Treasury Department and the taxpayer or by reason of suspending the running of the period. The running of this period of limitations on collections, however, under present law, is suspended where the assets of a taxpayer are in the custody or control of a court and for 6 months thereafter except in the case of an estate of a decedent or of an incompetent. Also the running of the period of limitations, under present law, is suspended for any period that collection is hindered because the assets of the taxpayer are out of the country. The bill modifies these two exceptions to the running of the statute of limitations. It also provides for the suspension of the period of limitations in another type of situation; namely, where the Government erroneously holds the property of a third person. These changes are discussed below.

(1) Assets of estate of a decedent or of an incompetent (sec. 6503(b) of the code)

As indicated above, the period of limitations is generally suspended where the assets of a taxpayer are in the control or the custody of a court; however, under present law, the statute continues to run in the case of the estate of a decedent or of an incompetent. The statute generally is suspended where assets are in the control or custody of a court because during this time they are not subject to administrative collection procedures. However, it appears that this reason applies equally well in the case of the estate of a decedent and in the case of an incompetent.

For the reason given above, the bill provides for the suspension of the running of the period of limitations on collections in the case of an estate of a decedent and an incompetent during the period their assets are in the control or the custody of a Federal or State court.

(2) Period taxpayers are outside the country (sec. 6503(c) of the code)

In addition to the staying of the period of limitations while the assets of a taxpayer are in control or the custody of a court, present law also provides for the suspension of this period of limitations where collection of the tax is hindered or delayed because a taxpayer's property is outside of the United States.

This rule has been difficult to apply both because of problems in making the determination as to whether collection has been "hindered or delayed" because property is outside of the country and also because of the factual problem in knowing when property is outside of the country and for precisely how long.

To remove these problems, the bill provides for the suspension of the period of limitations during the period of the taxpayer's absence from the country rather than that of the property. It is believed that the collection of the tax is most likely to be hindered during the period of a taxpayer's absence. However, there are administrative problems in keeping track of short periods of time the taxpayer may be out of the country. The bill meets this problem by not suspending the running of the period of limitations except when the taxpayer is continuously out of the country for 6 months or more. To be sure that the Government has an opportunity to collect the tax after his return, it is provided that in any event, the period is not to expire (where the taxpayer has been out of the country for 6 months or more) until 6 months after the taxpayer's return to the country.

(3) Property of third persons wrongfully held by the Government (sec. 6503(g) of the code)

Under present law, the running of the period of limitations with respect to a taxpayer is not suspended where the Government erroneously holds the property of a third person. In a situation of this type the Treasury Department normally halts its collection procedures in the belief that the taxpayer's liability has been satisfied. On occasion where this has occurred, the taxpayer has waited until the period of limitations has run and then helped the third party recapture his property after the Government had no recourse, as far as the taxpayer was concerned.

Your committee believes that it is undesirable to encourage actions of the type described above. For that reason, the bill provides that the running of the period of limitations on collections is to be suspended during the period the Treasury Department holds property of a third person wrongfully seized or received, and for 30 days afterward.

The suspension of the period of limitations under this provision begins at the time of the wrongful seizure or receipt of the property by the Government. It ends 30 days after the Treasury Department determines the levy was wrongful and returns the property, or if the third party goes to court, it ends 30 days after the entry of a final judgment to the effect that the levy was wrongful.

Where the period of limitations is suspended under this provision, it is suspended only as to that part of an assessment equal to the amount of money or the value of specific property which initially has wrongfully been taken from a third party and subsequently is returned to him. This amount or value is to be determined as of the date of return.

G. PROCEEDINGS WHERE UNITED STATES HAS TITLE TO PROPERTY (SEC. 107 OF THE BILL AND SECS. 7402 AND 7403 OF THE CODE)

(1) Action to quiet title (sec. 7402(e) of the code)

Under present law, the United States has the right to acquire title to property through the enforcement of a Federal tax lien, but it is not clear, at the present time, that it has authority to bring action to quiet title to property which it has acquired through the enforcement of the tax lien. This uncertainty as to whether the Government has the right to bring action to quiet title hinders collection efforts since, unless the Government can give clear title to property, the marketability of property is severely limited, and the Government is likely to

receive substantially less than the true value of the property in any subsequent sale.

For the reasons indicated above, your committee's bill gives the Government express authority to bring an action to quiet title to property it has acquired through the enforcement of a tax lien. Jurisdiction in cases of this type is given to the Federal district courts.

(2) Sale bids (sec. 7403(c) of the code)

Where property is sold at a tax lien foreclosure sale, the Internal Revenue Code contains no specific authority authorizing the Federal Government to bid at these sales where it believes that less than full consideration is being offered for the property. Such authority is contained elsewhere, however, in the public statutes (see sec. 195 of title 31 of the United States Code).

It is desirable for the Federal Government to bid in property to prevent its sale at distress prices in order to assure that the Government receives the full value of the property sold or the amount of the Government's tax claim, as well as to protect the interests of the delinquent taxpayer whose property is being sold.

For the reason indicated above, the bill codifies the rule that where the Government brings an action to enforce a tax lien, the Government can bid on the property where the Government holds a first lien. The amount which it may bid under the bill is limited to the amount of its lien, plus selling expenses. Whether or not the Government exercises this authority to bid within the limit set forth in the bill is a matter within the discretion of the Treasury Department.

H. INTERVENTION BY UNITED STATES (SEC. 108 OF THE BILL AND SEC. 7424 OF THE CODE)

Under present law, some questions have arisen as to whether the Government can intervene in a court proceeding to assert a tax lien against property. The Government is not expressly authorized to do so, and the opinions of the courts which have considered the issue are divided.

The absence of express authority for the Government to intervene to assert a tax lien has resulted in the Government attempting to achieve the same result by other means, such as by bringing a separate action to assert its lien.

The bill grants the Government authority to intervene in a court proceeding to assert a tax lien against property to avoid the result described above. In these cases where the Government intervenes, the same procedural rules, to the extent applicable, are to apply as where the Government is initially joined properly as a party. Where the Government's application to intervene is denied, the proceedings are to have no effect on the Government's tax lien on the property. This is consistent with the results which follow where the Government is not joined as a party.

I. DISCHARGE OF LIENS HELD BY UNITED STATES (SEC. 109 OF THE BILL AND SEC. 7425 OF THE CODE)

Under present law, a junior Federal tax lien may be discharged on foreclosure of a senior security interest. Such foreclosure may occur in a plenary judicial action, or, under the law of some States, by non-

judicial foreclosure pursuant to a power of sale contained in the senior security instrument. In addition, in some States, foreclosure of a senior security interest may be accomplished by sale of the property by a judicial officer pursuant to a judgment entered under a "confession of judgment" signed by the debtor (typically in the security interest instrument itself). Where State law so provides, a junior Federal tax lien may be extinguished without the United States either being made a party to the proceeding or having any actual notice. As a result, under current law tax liens are sometimes extinguished without the United States having actual notice of the proceedings, under circumstances where it is not possible for the Internal Revenue Service to take steps to protect the United States in the collection of its tax revenues.

Where there is a plenary judicial proceeding and the Government, as a junior lienor, must be joined for its interests to be discharged in the proceeding, the present procedure works well. However, in other cases where the interests of junior lienors may be eliminated without notice, it appears that the interests of the Government are not presently sufficiently protected. Although legitimate local considerations may preclude requiring the Government (in other than plenary proceeding) to be joined as a party for its interests under a tax lien to be discharged, there does not appear to be any reason why in these cases there should not be a timely notice of the proceedings to the Government where notice of its tax lien is on file. The requirement of notice gives the Government an opportunity to review its position and determine the appropriate action without placing an undue burden on a foreclosing creditor.

As explained below, the bill adds a new provision to the internal revenue laws requiring the Government to be made a party in a plenary proceeding to discharge a tax lien. The bill also makes provision for a timely notice to the Government where it has the status of a junior lienor and there is no plenary proceeding.

(1) Plenary foreclosure actions (sec. 7425(a) of the code)

The bill provides that in a plenary judicial proceeding where the Government has properly filed notice of a tax lien before the proceedings commence, but the Government is not joined as a party in the court proceeding, a judgment as to the property is not to disturb a tax lien or claim of a tax lien of the Government on this property. The same result is to occur when the property is sold pursuant to the judgment; the lien on the property continues into the hands of the third person. Where the Government is joined in these proceedings no change is made by the bill in the present operation of local law.

Where a notice of tax lien is not filed before a plenary proceeding commences—even in those cases where the filing is not required, such as in the case of a special lien for estate and gift taxes—a judicial sale is to have the same effect with respect to a tax lien as local law provides with respect to such matters. One exception is provided to this rule: where the Government is not joined as a party and the sale discharges the tax lien, the Government may still assert its claim against the proceeds of the sale at any time before their distribution is ordered with the same force as the lien had against the property sold.

(2) Other foreclosure proceedings (sec. 7425(b) of the code)

The bill provides that, in the case of all other foreclosure proceedings, where timely notice of the proceedings is given to the Government, the Government's claim to property under a tax lien is to be discharged in the manner provided by local law.

Where foreclosures covered by this provision are made without proper notice to the Government, the bill provides that this does not affect the Government's claim under a tax lien (as where the Government is not joined in a judicial foreclosure). In these cases, the Government's claim continues against the property into the hands of a third party. On the other hand, where notice of the Government's claim under a tax lien is not filed (even in those cases where filing is not required), or where the Government is notified of the proceeding, a sale has the same effect on the claim as local law provides with respect to similar claims. (This is the same result as where the Government is not joined as a party in a plenary proceeding where its lien is not on file.)

(3) Special rules (sec. 7425(c) of the code)

In connection with the plenary and other foreclosure proceedings outlined above, the bill provides a series of rules which are to be followed. For the most part these concern procedural matters. These can be summarized as follows:

(*a*) Under the bill for a notice of sale to be effective, it must be delivered to the Treasury Department at least 25 days prior to the sale.

(*b*) As previously indicated under the bill, the Government has the discretion to consent to a sale, free of its claim.

(*c*) Under the bill, where property is perishable, the 25-day notice rule referred to in (*a*) above is waived and the property may be sold free of the Government's claim as long as notice is given the Government at any time prior to the sale.

Where perishable items are sold, under this provision, the proceeds of the sale must be held subject to the claim of the Government for 30 days and the Government's claim to these proceeds is the same as its claim to the items sold. Should the seller fail to hold the proceeds for the 30-day period, he is to be personally liable to the Government for its claim, where the Government asserts its claim during the 30-day period, to the extent of the net amount of the proceeds.

(4) Redemption by the United States (sec. 7425(d) of the code)

As previously indicated, under the bill the Government is given the authority to redeem real property sold under other than plenary judicial proceedings where the sales were to satisfy a lien prior to a tax lien. The period of time for redemption in these cases is 120 days from the date of sale or the period allowable under local law, if longer. Where the Government exercises its right of redemption, it must pay the amount paid by the purchaser at the sale plus interest and expenses necessary to maintain the property from the time of sale. Procedures are set forth to be followed in preparing certificates of redemption for this purpose.

J. CIVIL ACTIONS BY PERSONS OTHER THAN TAXPAYERS (SEC. 110 OF THE BILL AND SECS. 7426, 6532 AND 7421 OF THE CODE)

Present law is quite limited in the extent to which it takes into account the rights of third parties in the procedures set out in the tax laws for the collection of taxes from a taxpayer. Under present law, for example, the United States cannot be sued by third persons where its collection activities interfere with their property rights. This includes cases where the Government wrongfully levies on one person's property in attempting to collect from a taxpayer. However, some courts allow suits to be brought against district directors of Internal Revenue where this occurs. Technically, these suits are not against the Government, but, in fact, the Government defends them and pays all costs, so that the effect is practically the same as if these suits were brought against the United States.

Another area in which present law does not adequately take into account rights of third parties are cases where the Government levies on a taxpayer's property and sells it for more than the taxes he owes. In these cases the taxpayer can bring a refund action against the Government for the surplus, but a third person who has a junior lien on a taxpayer's property (entitling him to part or all of these surplus proceeds) presently cannot sue to claim them. As a result, where the Treasury Department denies his claim to these proceeds, he is without a remedy against the Government.

Still another area exists where present law is relatively restrictive in dealings by the Government with third parties. There is no provision in present law authorizing the Treasury Department to enter into agreements with taxpayers and third persons allowing property subject to a tax lien to be sold free of the lien pending a determination of who is entitled to the proceeds.

Your committee believes where the Government levies on property which, in part at least, a third person considers to be his, he is entitled to have his case heard in court. While, under present law, some courts in effect permit this result by allowing suits to be brought against district directors, your committee believes this result should be generalized. In addition, your committee believes it is more appropriate, instead of bringing the actions against district directors, to bring them directly against the Government. Your committee also believes that a person who claims an interest in surplus proceeds realized by the Government when it sells property to satisfy a tax liability is entitled to judicial consideration of his claim if it is denied by the Treasury Department. Once a taxpayer's liability is satisfied, the Government's retention of surplus proceeds is wrongful as to the person legally entitled to them. In addition, since this bill authorizes the Treasury Department to enter into agreements with taxpayers and others to sell property pending a determination of who is entitled to it, your committee believes that claimants to the property should be permitted to join the Government in an action where they are unable to resolve this matter.

For the reasons given above, your committee's bill permits wrongful levy actions and actions for surplus proceeds to be brought against the Government by nontaxpayers. Similarly, it allows anyone, including taxpayers, to bring an action for the distribution of substituted sale proceeds. These are all actions in which the taxpayer's tax liability is not open to question.

(1) Actions permitted (sec. 7426(a) of the code)

The bill makes provisions for three new types of actions all of which may be brought only in Federal district courts. First, where a person claims the Government wrongfully levied upon his property to satisfy the tax liability of another, the bill provides that he may bring suit against the Government. "Wrongful," as used here, refers to a proceeding against property which is not the taxpayer's. A person may bring suit under this provision once a levy is made.

Second, where a person (other than the taxpayer) claiming a junior interest in property also claims he is entitled to the surplus proceeds the Government realized on a sale of the property following a levy, the bill provides he may bring suit against the Government. "Surplus proceeds" are those in excess of the amount necessary to satisfy the tax liability giving rise to the levy and the expenses of the levy sale.

Third, where a person claims he is entitled to the proceeds of property once subject to a tax lien which is sold, under an agreement with the Government, to hold the proceeds instead of the property, the bill provides that he may join the Government to assert his claim to these proceeds. Any person, including the taxpayer, may bring suit under this provision, although, of course, for purposes of a suit under this provision, too, the assessment against the taxpayer is conclusively presumed valid.

(2) Forms of relief (sec. 7426(b) of the code)

Where a person brings a wrongful levy action, or an action claiming an interest in either surplus proceeds or substituted sale proceeds, the relief the Federal district court can grant is limited to one of the four types described below.

First, the bill provides that a court can enjoin the Government from proceeding once it has levied, where it determines that a seizure or surrender of property under a levy, or a sale of property following a levy, makes injunctive relief appropriate. Injunctive relief is limited to cases where the court determines the Government's action is wrongful and, if completed, would irreparably injure the rights of another in the property which are prior to the rights of the Government. If this issue is decided in the person's favor, typically the injunction is either made permanent, where the Government does not have possession of the property, or is continued until the levy is released and the specific property is returned to the person.

Second, where a court determines the Government's levy is wrongful, the bill provides that the court can order the Government to return the specific property levied on or award the person who brings the action a money judgment. Any relief under this provision is conditioned on a finding that the property levied on did not belong to the taxpayer. The bill provides that a court can order the Government to return property wrongfully levied on only where it is identifiable and still in the Government's possession. (Property under this provision includes money where identifiable, such as a coin collection.) Where the Government wrongfully levies on money, relief under this provision is limited to the amount of the money, and where the Government wrongfully levies on other property which is no longer in its possession, relief is limited to the amount the Government received from its sale. Where the Government was the purchaser of the property at the sale, this amount received from the sale is to be the minimum price

at which the Government would have allowed the property to be sold, or, if more, the amount received by the Government when it later resold the property.

Third, where a court determines that the claim of a person is transferred from property to surplus proceeds remaining after the levy sale by the Government, the court can award the party (or parties) a judgment (or judgments) in an amount not in excess of the surplus proceeds the Government realized on the enforcement of its levy.

Fourth, where a court determines that a person's claim to property sold under an agreement providing for the proceeds to be substituted in their stead is valid, the bill provides that the court can award the person (or persons) a judgment (or judgments) in an amount not in excess of the substituted sale proceeds.

K. SALE OF PROPERTY ACQUIRED BY UNITED STATES (SEC. 111 OF THE BILL AND SECS. 7505(a) AND 7506(a) OF THE CODE)

Under present law the Government has express authority to sell personal property purchased by it at a sale following a levy. It does not have, however, express authority to sell personal property acquired by other means in the administration of the tax laws. Similarly, although the Government has express authority to administer and sell real property acquired by it under various procedures in the administration of the tax laws, it does not have express authority to administer and sell real property acquired by it under various procedures in the administration of the tax laws, it does not have express authority to administer and sell real property acquired by it by redemption.

Where the Government has acquired property as the result of redemption and other procedures under the tax laws, in practice it has had to administer it and, subsequently, to sell the property. Your committee believes it is appropriate for express authority for these actions to be contained in the revenue laws. This is particularly desirable for the future because with the redemption fund (see next provision) set up by the bill, the redemption procedure probably will be used more often in subsequent years.

For the reasons given above, your committee's bill amends existing law to make it clear that the Government's authority to administer and sell property it acquires in the administration of the tax laws extends to property acquired by redemption and other means.

L. FUND FOR REDEMPTION OF REAL PROPERTY BY UNITED STATES (SEC. 112 OF THE BILL AND SECS. 7809(a) AND 7810 OF THE CODE)

Under present law the Government can redeem real property on which it has a junior lien where the property is sold at a foreclosure sale brought by a holder of a senior lien. The bill extends somewhat the authority the Government has to redeem real property in certain cases where it is sold at foreclosures not involving plenary judicial proceedings. No fund for the purchase of redeemed property is authorized, however, and some question exists as to whether general appropriations can appropriately be used for this purpose.

By exercising its power of redemption the Government can purchase property sold at distress prices and resell the property at a profit. This profit, of course, is applied in satisfaction of the taxpayer's liability. In some instances this procedure is the only means

by which the Government can collect taxes due. In all instances, however, the exercise of this power, where redeemed property is sold at a profit, inures to the benefit of delinquent taxpayers.

In view of these considerations, your committee believes the Government should exercise its power of redemption, and for this reason the bill establishes a separate revolving fund out of which funds can be drawn for this purpose. It is anticipated that the proceeds on the resale of redeemed property will replenish the revolving fund so that additional appropriations will not be necessary.

The bill provides for the establishment of a revolving fund out of which the Government can draw funds to redeem real property. This fund is to be subject to the control of the Treasury Department and is without fiscal year limitation. The total authorization for the fund is $1 million. When redeemed property is resold, the proceeds of the resale, to the extent of the costs of redemption, are to be deposited in the fund. The remaining proceeds are, of course, applied in satisfaction of the taxpayer's liability. Any surplus is returned to the parties legally entitled to them.

M. EFFECT OF JUDGMENT ON TAX LIEN AND LEVY (SEC. 113 OF THE BILL AND SECS. 6322 AND 6502(a) OF THE CODE)

Under present law, it is not clear whether a lien arising from a tax assessment continues where the liability underlying the lien is reduced to judgment. One effect, if the lien does not continue where it is reduced to judgment, may be that the Government loses its priority under the lien, vis-a-vis competing creditors, and takes a new priority as of the later date of the judgment. Another effect, if the lien does not continue after the judgment, may be that the Government cannot enforce the tax lien and collect under it, but must pursue collection under the judgment. There is also some question under present law of whether the entry of a judgment cuts off the Government's right to collect by levy, even though the normal 6-year period of collection on the tax assessment has not expired at the time the judgment is entered.

Your committee believes the entry of a judgment confirming an assessed tax liability should not cut back on the rights of the Government. Both the judgment and the lien arise out of the same tax liability, and it is intended that this liability continue until it is satisfied or becomes unenforceable by reason of lapse of time. Since the liability giving rise to the lien and that giving rise to the judgment is the same, your committee believes the Government's priority, vis-a-vis other creditors, should be the same under each. Moreover, since, in effect, the judgment merely confirms the validity of the lien arising out of the tax assessment, it is believed that the Government's right to foreclosure under the tax lien (as contrasted to the more cumbersome method of foreclosing under the judgment) should not be curtailed as the result of reducing the assessment to judgment. Your committee recognizes, however, there comes a time when it is inappropriate for the Government to collect by administrative levy action without court supervision.

For the reasons indicated above, your committee's bill amends existing law to provide that a tax lien is not merged into a judgment on the assessed tax liability. Under the bill, where a tax assessment is reduced to judgment, the lien continues until the underlying tax

liability is satisfied or becomes unenforceable by reason of lapse of time. The bill also makes it clear that the Government's right to collect taxes due by administrative levy action is neither curtailed nor expanded by the judgment.

N. CONSENT OF UNITED STATES TO BE JOINED IN CERTAIN PROCEEDINGS (SEC. 201 OF THE BILL AND SECS. 2140 (a), (b), (c), AND (d) OF TITLE 28)

This section relates to judicial proceedings affecting property on which the United States has or claims a mortgage or other lien. Under present law the Government may be brought into a judicial proceeding as a party to quiet title to property or to foreclose a mortgage or other lien on property; it may not, however, be joined as a party in certain other judicial proceedings. The result is that where parties attempt to join the Government in cases other than the types previously described, the Government must move to dismiss the motion to join and, where it wants to assert its interest, it must petition to intervene or initiate a new proceeding.

Present law sets forth the pleading requirements for those actions where the Government may be joined as a party. This is so the Government will have notice of the reason it is being joined. Similarly, the statute spells out under what circumstances the relief granted to private parties in actions where the Government is joined is to affect the Government's interest. Thus, where a judicial sale is ordered in the proceedings, it is specified that the sale is to have the same effect on the Government's interest as local law provides with respect to similar matters. The statute also gives the Government the right to redeem the property sold at the sale for reasons previously discussed in this report. It does not, however, contain rules for determining the redemption price.

Your committee believes the Government's consent to being joined as a party should be broadened to include those cases where experience has shown it is desirable for the Government to be a party in order to assert its interests. This also requires changing the present pleading requirements to be sure the Government will be informed of the reasons for its being joined in these actions. Similarly, in these new actions, a judicial sale may not always be the appropriate remedy. Experience has also shown that in order to obtain uniformity a rule for determining the amount the Government must pay where it exercises the right of redemption needs to be provided.

In accord with the reasons given above, the Government's consent to be sued is broadened to include "partition" and "condemnation" suits and "interpleader" suits and suits "in the nature of interpleader." Partition suits are those where persons with undivided interests in a parcel of property seek to have their undivided interests in the whole divided into separate interests in portions of the parcel. Condemnation suits are those brought by governmental (and quasi-governmental) units to acquire private property for the purpose of converting it to public use. Interpleader actions are those brought by persons holding property for the purpose of determining who is entitled to the property held.

The bill also makes two changes in present law with respect to the pleading requirements in those actions where the Government has

consented to be joined as a party. The first change makes it clear that any pleading which attempts to join the Government as a party must refer to the Government's interest in the suit. Under present law the statute provides that only the complaint must refer to the Government's interest. The second change specifies the type of information (such as the name of the taxpayer whose tax liability gives rise to the Government's interest in the action, the district director's office involved, etc.) which must be contained in the pleading seeking to join the Government in actions involving liens under the internal revenue laws.

The bill provides that, generally, in suits where the Government is joined as a party, the judgment of the court is to have the same effect with respect to the discharge of the Government's interest as applicable local law provides with respect to similar matters. An exception is made where a sale is ordered to satisfy a lien junior to the Government; here, the Government's interest cannot be discharged without its consent, even if local law provides otherwise.

Under this provision, in the new types of suits in which the Government has consented to be sued, and in a quiet title action as well, the person bringing the suit does not have to request a judicial sale for the judgment of the court to have the effect of discharging the property from the Government's interest where local law so provides. In an action to foreclose a mortgage or other lien, on the other hand, the person must seek a judicial sale.

Changes are also made regarding the Government's rights where property is sold in actions where the Government is joined. First, where the lien arises under the internal revenue laws, the provision cuts the period in which the Government may redeem the property from 1 year to 120 days or, if longer, the period allowed by applicable local law. This gives the Government a sufficient time to determine whether redemption is desirable. The second change the bill makes here is to add to the judicial code the exceptions to the right of redemption presently contained in separate Federal acts (such as the Housing Act of 1950). The last change the provision makes is that it authorizes the head of a department to delegate his authority to bid on property sold at one of these proceedings to satisfy a prior lien of the Government.

The bill also provides a formula for determining the price the Government must pay where it redeems property sold in proceedings where the Government is joined as a party (under this section), and where it is sold in foreclosures other than plenary judicial proceedings. The redemption price is to be the amount paid by the purchaser at the foreclosure sale plus interest at the statutory rate (6 percent) from the date of sale. Where the purchaser at the sale is the person whose lien is being foreclosed, the amount paid by him includes the amount of the debt underlying his lien to the extent that the lien is satisfied by the sale. Where the lien is fully satisfied, the purchaser is not to receive less than the amount due him at the time of sale. Where the lien attaches to other property, however, or where, after the sale, the purchaser still has the right to sue for the unpaid balance of the amount due him, the amount paid does not include this unpaid balance.

In addition to the price paid by the purchaser plus interest, in order to redeem property, the Government must pay, as part of the redemp-

tion price, the excess, if there is any, of any expenses incurred after the foreclosure sale in maintaining the property over the income from the property during this period. Where the property is not rented out but is used by the purchaser, the income includes the reasonable rental value of the property.

O. JURISDICITION AND VENUE IN CERTAIN CASES AGAINST UNITED STATES (SEC. 202 OF THE BILL AND SECS. 1346(e) AND 1402(c) OF TITLE 28)

Under present law, the Government cannot be sued where it wrongfully levies upon property, or in actions involving surplus proceeds or substituted sale proceeds. Therefore, present law contains no provision giving the Federal courts jurisdiction over actions of this type. Similarly, there are no venue provisions determining in what judicial district these actions may be brought.

Since under other provisions of this bill wrongful levy actions, and actions involving surplus proceeds and substituted sale proceeds, may be brought, courts must have jurisdiction over them and venue rules must be provided.

Your committee's bill, therefore, confers jurisdiction on the Federal courts over wrongful levy actions, and actions involving surplus proceeds and substituted sale proceeds. The Federal district courts have original jurisdiction over these actions.

As to venue, the bill provides that wrongful levy actions, and actions involving surplus proceeds and substituted sale proceeds, are to be brought only in the judicial district where the property levied on is situated at the time of levy. Where the action does not arise out of a wrongful levy (such as in certain cases involving substituted sale agreements) the action is to be brought where the event giving rise to the lawsuit occurred.

P. EFFECTIVE DATE (SECS. 114 AND 203 OF THE BILL)

The bill provides, as a general rule, that the amendments made by the bill are to apply after the date of enactment. This is true regardless of when a lien or a title of the United States arose or when a lien or interest of any other person was acquired. However, the bill provides certain exceptions to this general rule as to the effective date for the provisions of the bill. They are as follows:

(1) The amendments made by the bill are not to apply in any case where the Government has, in effect, completed enforcement of its interest arising under a lien. Thus, the amendments are not to apply where the enforcement proceeding has reached the stage of a civil action or suit which has become final by judgment, sale, or agreement, before the date of enactment.

(2) The amendments are not to apply to any case where they would impair a priority of any person holding a lien or interest prior to the date of enactment; increase the liability of any person; or, shorten the time for bringing suit with respect to any transaction occurring before the date of enactment.

(3) The amendments imposing a liability on third persons who pay wages of employees of another or supply funds for the specific purpose of paying wages of the employees of another, are

to apply only with respect to wages paid on or after January 1, 1967.

(4) The amendment requiring performance bonds on public works contracts to provide for the payment of withholding are to apply only to contracts entered into pursuant to invitations for bids made by the Government after June 30, 1967.

(5) Where a person has commenced a civil action to clear title to property under the present law (sec. 7424 which, in effect, is repealed by this bill), the action is to be determined in accordance with that section without regard to this bill.

III. CHANGES IN EXISTING LAW

In the opinion of the committee, it is necessary, in order to expedite the business of the Senate, to dispense with the requirements of subsection 4 of rule XXIX of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill, as reported).

SECTION 14

SENATE FLOOR DEBATE

(From the Daily Congressional Record)

[P. 25419]

THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 1676, H.R. 11256, and the three measures which follow it on the calendar.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

FEDERAL TAX LIEN ACT OF 1966

The Senate proceeded to consider the bill (H.R. 11256) to amend the Internal Revenue Code of 1954 with respect to the priority and effect of Federal tax liens and levies, and for other purposes which had been reported from the Committee on Finance with amendments on page 13, after line 17, to strike out:

(f) PLACE FOR FILING NOTICE FORM. The notice referred to in subsection (a) shall be filed—

(1) UNDER STATE LAWS.—In the office designated by the law of the State in which the property subject to the lien is situated, whenever the State has by law designated an office within the State for the filing of such notice; or

(2) WITH CLERK OF DISTRICT COURT.—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State has not by law designated an office within the State for the filing of such notice; or

(3) WITH RECORDER OF DEEDS OF THE DISTRICT OF COLUMBIA.—In the office of the Recorder of Deeds of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

If the notice filed pursuant to paragraph (1) is in such form as would be valid if filed with the clerk of the United States district court pursuant to paragraph (2), such notice shall be valid notwithstanding any law of the State regarding the form or content of a notice of lien.

And, in lieu thereof, to insert:

(f) PLACE FOR FILING NOTICE; FORM.—

(1) PLACE FOR FILING.—The notice referred to in subsection (a) shall be filed—

(A) UNDER STATE LAWS.—

(i) REAL PROPERTY.—In the case of real property, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated; and

(ii) PERSONAL PROPERTY.—In the case of personal property, whether tangible or intangible, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated; or

(B) WITH CLERK OF DISTRICT COURT.—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State has not by law designated one office which meets the requirements of subparagraph (A); or

(C) WITH RECORDER OF DEEDS OF THE DISTRICT OF COLUMBIA.—In the office of the Recorder of Deeds of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(2) SITUS OF PROPERTY SUBJECT TO LIEN.—For purposes of paragraph (1), property shall be deemed to be situated—

(A) REAL PROPERTY.—In the case of real property, at its physical location; or

(B) PERSONAL PROPERTY.—In the case of personal property, whether tangible or intangible, at the residence of the taxpayer at the time the notice of lien is filed.

For purposes of paragraph (2)(B), the residence of a corporation or partnership shall be deemed to be the place at which the principal executive office of the business is located, and the residence of a taxpayer whose residence is without the United States shall be deemed to be in the District of Columbia.

(3) FORM.—The form and content of the notice referred to in subsection (a) shall be prescribed by the Secretary or his delegate. Such notice shall be valid notwithstanding any other provision of law regarding the form or content of a notice of lien.

On page 16, after line 13, to strike out:

(g) REFILING OF NOTICE.—

(1) IN GENERAL.—For purposes of this section, unless notice of lien is refiled (in the office in which the prior notice was filed) during the required refiling period, such notice of lien shall be treated as filed on the date on which it is filed (in accordance with subsection (f)) after the expiration of such refiling period.

And, in lieu thereof, to insert:

(g) REFILING OF NOTICE.—For purposes of this section—

(1) GENERAL RULE.—Unless notice of lien is refiled in the manner prescribed in paragraph (2) during the required refiling period, such notice of lien shall be treated as filed on the date on which it is filed (in accordance with subsection (f)) after the expiration of such refiling period.

(2) PLACE FOR FILING.—A notice of lien refiled during the required refiling period shall be effective only—

(A) if such notice of lien is refiled in the office in which the prior notice of lien was filed; and

(B) in any case in which, 90 days or more prior to the date of a refiling of notice of lien under subparagraph (A), the Secretary or his delegate received written information (in the manner prescribed in regulations issued by the Secretary or his delegate) concerning a change in the taxpayer's residence, if a notice of such lien is also filed in accordance with subsection (f) in the State in which such residence is located.

On page 17, at the beginning of line 18, to strike out "(2)" and insert "(3)"; on page 18, at the beginning of line 3, to strike out "(3)" and insert "(4)"; and, in line 4, after the word "paragraph", to strike out "(2)" and insert "(3)".

Mr. HARTKE. Mr. President, I am pleased to report that the Internal Revenue Service has not only withdrawn the July 7 proposed regulations on deduction of educational expenses, but is negotiating with representatives of the NEA and other professional groups for

further improvement of the October 1 proposed regulations. The IRS hearings scheduled to begin November 15 hold great promise for solution to the problems which come within the scope of the regulatory authority of the Internal Revenue Service.

The matter of deduction from gross income for teachers' educational expenses can only be provided by act of Congress. At this late date it is impractical to attempt to hold hearings on this issue and I have no intention of proposing an amendment from the floor. However, the sentiment in both bodies of Congress for this measure is strong, as evidenced by the introduction of over 100 bills in the House and of cosponsorship of Senator TALMADGE's bill, S. 3641, and of comments to me from many Senators from both sides of the aisle in support of my amendment 779 to H.R. 11256, the tax lien bill.

It is my hope that early in the 90th Congress we can give this important educational issue every consideration and that agreement can be reached on legislation. There is no area of our national life more important than education. The improvement of the competency of teachers is a proper objective of the Federal Government if quality education for all is to be achieved. At the same time the specter of Federal control cannot haunt us if we provide, through the taxing power of Congress, the incentive to individual teachers to improve their professional competence through personal efforts for self-improvement.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 1708), explaining the purposes of the bill.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

I. GENERAL STATEMENT

The bill as reported by your Committee makes one amendment to the bill as passed by the House. This amendment is with respect to the place of filing (and of refiling, discussed in A.6 and A.7 below) notice of a tax lien.

The Federal Tax Lien bill of 1966 represents the first comprehensive revision and modernization of the provisions of the internal revenue laws concerned with the relationship of Federal tax liens to the interests of other creditors.

Since the adoption of the Federal income tax in 1913, the nature of commercial financial transactions has changed appreciably. Business practices have been substantially revised and, as a result, many new types of secured transactions have been developed. In an attempt to take into account these changed commercial transactions, and to secure greater uniformity among the several States, a Uniform Commercial Code was promulgated somewhat over 10 years ago by the American Law Institute and the National Conference of Commissioners on Uniform State Laws. A revised version of this code is already law in over 40 States and could well be adopted by many of the remaining States in the near future. Under the Commercial Code, priority now is afforded new types of commercial secured creditors not previously protected.

This bill is in part an attempt to conform the lien provisions of the internal revenue laws to the concepts developed in this Uniform Commercial Code. It represents an effort to adjust the provisions in the internal revenue laws relating to the collection of taxes of delinquent persons to the more recent developments in commercial practice (permitted and protected under State law) and to deal with a multitude of technical problems which have arisen over the past 50 years. The bill represents the culmination of a project initiated approximately 10 years ago by those concerned with the relationship of the tax lien provisions to the interests of other creditors. Since that time, the suggestions and ideas of various groups have been studied and analyzed carefully, both by the groups themselves and by the staffs of the

[P. 25420]

Treasury Department and the congressional committees.

Under present law, a lien for Federal taxes arises when a taxpayer's liability is assessed. The lien attaches to all of the property he then holds or subsequently acquires. The assessment is made when the unpaid tax liability is entered on the appropriate records of the Internal Revenue Service—which occurs, in the case of a taxpayer who voluntarially shows the tax liability on his return, shortly after the time the return is filed. Although the lien arises on the date of assessment, present law provides that purchasers and certain categories of secured creditors are given priority over the tax lien up to the time a notice of the tax lien is filed in the appropriate local office as designated by State law. Mortgagees, pledgees, purchasers, and judgment lien creditors are given this priority status. In addition, in the case of securities and motor vehicles, present law provides that even a filed Federal tax lien is not generally to be effective as against a purchaser or a mortgagee or pledgee of securities or a purchase of motor vehicles.

This bill substantially improves the status of private secured creditors. This is accomplished, first, by expanding the categories of creditors protected as against a nonfiled tax lien to include a mechanic's lienor.

Second, various types of secured creditor interests already having, or given, priority status over tax liens are specifically defined, and it is provided that where those interests qualify under the definitions they are to be accorded this priority status whether or not they are in all other respects definite and complete at the time notice of the tax lien is filed.

Third, the bill adds to the "superpriority" status accorded to certain interests in securities and motor vehicles an additional eight categories of interests in properties which are to be effective as against a tax lien, even though notice of the lien has been filed.

Fourth, a priority status is provided for intrests arising under three types of financing agreements entered into before the tax lien filing—commercial transactions financing, real property construction or improvement financing, and obligatory disbursements—even though the funds are advanced or the property comes into existence after the tax lien filing. In the case of commercial transactions financing, the protection

generally is afforded even though the property underlying the lien is not yet in existence or is turned over within a short time (45 days) after the tax lien filing as long as the loan or purchase is made within this time. In the absence of this grace period, commercial factors and other lenders would have to check on a daily basis to see if a tax lien is filed to protect their interests. Interests arising under the real property construction and improvement financing agreements are protected even though loans are made after the tax lien filing because the construction is expected to enhance the value of the property underlying the tax lien. Interests arising under an obligatory disbursement agreement are protected because a person is obliged under a preexisting agreement to make disbursements after a tax lien filing and someone other than the taxpayer has relied on this obligation.

Fifth, a limited type of priority is given by the bill with respect to two other categories. In the case of security interests, generally, protection is afforded for a period of up to 45 days after the filing of notice of a tax lien. Also, interest paid with respect to interests having priority over a Federal tax lien and costs of preserving property subject to interests having priority over a tax lien are given a priority over tax liens even though notice has been filed (where these items have the same priority as principal debt under State law).

In addition to dealing with the relative priority of creditors' interests as against Federal tax liens, the bill also makes numerous modifications in the provisions of the internal revenue laws dealing with the procedures to be followed in collecting the taxes of a delinquent person. In general terms, these modifications are intended to represent a reasonable accommodation of the interests of the Government in collecting the taxes of delinquent taxpayers with the rights of the taxpayers and third parties. The modifications are concerned with the procedures for levying upon property of a delinquent taxpayer, the liability of lenders, sureties, etc., for withholding taxes, the running of the statute of limitations in the case of delinquent tax liabilities, procedures arising out of, or with respect to the sale of property of delinquent taxpayers, the court procedures to be followed with respect to tax liens, and provision for the redemption of real property by the United States, where it is sold by a creditor with a higher priority.

The Treasury Department urges the adoption of this bill.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the committee amendments.

The amendments were agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

SECTION 15

BILL AS PASSED BY THE SENATE

(See Section 12 of this document, page 661)

(NOTE: There were no Senate floor amendments to this bill.)

SECTION 16

HOUSE FLOOR DEBATE ON AGREEING TO SENATE AMENDMENTS

(From the Daily Congressional Record)

[*October 19, 1966*]

[*P. 26672*]

FEDERAL TAX LIENS AND LEVIES

Mr. MILLS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 11256) to amend the Internal Revenue Code of 1954 with respect to the priority and effect of Federal tax liens and levies, and for other purposes, with Senate amendments thereto and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 13, strike out all after line 17 over to and including line 14 on page 14 and insert:

"(f) PLACE FOR FILING NOTICE; FORM.—

"(1) PLACE FOR FILING.—The notice referred to in subsection (a) shall be filed—

"'(A) UNDER STATE LAWS.—

"'(i) REAL PROPERTY.—In the case of real property, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated; and

"'(ii) PERSONAL PROPERTY.—In the case of personal property, whether tangible or intangible, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated; or

"'(B) WITH CLERK OF DISTRICT COURT.—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State has not by law designated one office which meets the requirements of subparagraph (A); or

"'(C) WITH RECORDER OF DEEDS OF THE DISTRICT OF COLUMBIA.—In the office of the Recorder of Deeds of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

"'(2) SITUS OF PROPERTY SUBJECT TO LIEN.—For purposes of paragraph (1), property shall be deemed to be situated—

"'(A) REAL PROPERTY.—In the case of real property, at its physical location; or

"'(B) PERSONAL PROPERTY.—In the case of personal property, whether tangible or intangible, at the residence of the taxpayer at the time the notice of lien is filed.

For purposes of paragraph (2)(B), the residence of a corporation or partnership shall be deemed to be the place at which the principal executive office of the business is located, and the residence of a taxpayer whose residence is without the United States shall be deemed to be in the District of Columbia.

"'(3) FORM.—The form and content of the notice referred to in subsection (a) shall be prescribed by the Secretary or his delegate. Such notice shall be valid nothwithstanding any other provision of law regarding the form or content of a notice of lien'."

Page 14, strike out lines 15 to 21, inclusive, and insert:

"'(g) REFILING OF NOTICE.—For purposes of this section—

"'(1) GENERAL RULE.—Unless notice of lien is refiled in the manner prescribed in paragraph (2) during the required refiling period, such notice of lien shall be treated as filed on the date on which it is filed (in accordance with subsection (f)) after the expiration of such refiling period.

"'(2) PLACE FOR FILING.—A notice of lien refiled during the required refiling period shall be effective only—

"'(A) if such notice of lien is refiled in the office in which the prior notice of lien was filed; and

"'(B) in any case in which, 90 days or more prior to the date of a refiling of notice of lien under subparagraph (A), the Secretary or his delegate received written information (in the manner prescribed in regulations issued by the Secretary or his delegate) concerning a change in the taxpayer's residence, if a notice of such lien is also filed in accordance with subsection (f) in the State in which such residence is located.'"

Page 14, line 22, strike out "(2)" and insert "(3)".

Page 15, line 6, strike out "(3)" and insert "(4)".

Page 15, line 7, strike out "(2)" and insert "(3)".

The SPEAKER. Is there objection to the request of the gentleman from Arkansas?

Mr. MOORE. Mr. Speaker, reserving the right to object, for the reasons heretofore stated by me and by reason of the fact that the Senate amendments are asked to be concurred in with respect to this House bill, I object.

The SPEAKER. Objection is heard.

[*October 20, 1966*]

[*P. 27071*]

FEDERAL TAX LIEN ACT

Mr. MILLS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 11256) to amend the Internal Revenue Code of 1954, with respect to the priority and effect of Federal tax liens and levies, and for other purposes, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 13, strike out all after line 17 over to and including line 14 on page 14 and insert:

"(f) PLACE FOR FILING NOTICE; FORM.—

"(1) PLACE FOR FILING.—The notice referred to in subsection (a) shall be filed—

"(A) UNDER STATE LAWS.—

"(i) REAL PROPERTY.—In the case of real property, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated; and

"(ii) PERSONAL PROPERTY.—In the case of personal property, whether tangible or intangible, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated; or

"(B) WITH CLERK OF DISTRICT COURT.—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State has not by law

designated one office which meets the requirements of subparagraph (A); or

"(C) WITH RECORDER OF DEEDS OF THE DISTRICT OF COLUMBIA.—In the office of the Recorder of Deeds of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

"(2) SITUS OF PROPERTY SUBJECT TO LIEN.—For purposes of paragraph (1), property shall be deemed to be situated—

"(A) REAL PROPERTY.—In the case of real property, at its physical location; or

"(B) PERSONAL PROPERTY.—In the case of personal property, whether tangible or intangible, at the residence of the taxpayer at the time the notice of lien is filed.

For purposes of paragraph (2)(B), the residence of a corporation or partnership shall be deemed to be the place at which the principal executive office of the business is located, and the residence of a taxpayer whose residence is without the United States shall be deemed to be in the District of Columbia.

"(3) FORM.—The form and content of the notice referred to in subsection (a) shall be prescribed by the Secretary or his delegate. Such notice shall be valid notwithstanding any other provision of law regarding the form or content of a notice of lien.

Page 14, strike out lines 15 to 21, inclusive, and insert:

"(g) REFILING OF NOTICE.—For purposes of this section—

"(1) GENERAL RULE.—Unless notice of lien is refiled in the manner prescribed in paragraph (2) during the required refiling period, such notice of lien shall be treated as filed on the date on which it is filed (in accordance with subsection (f)) after the expiration of such refiling period.

"(2) PLACE FOR FILING.—A notice of lien refiled during the required refiling period shall be effective only—

"(A) if such notice of lien is refiled in the office in which the prior notice of lien was filed; and

"(B) in any case in which, 90 days or more prior to the date of a refiling of notice of lien under subparagraph (A), the Secretary or his delegate received written information (in the manner prescribed in regulations issued by the Secretary or his delegate) concerning a change in the taxpayer's residence, if a notice of such lien is also filed in accordance with subsection (f) in the State in which such residence is located."

Page 14, line 22, strike out "(2)" and insert "(3)".

Page 15, line 6, strike out "(3)" and insert "(4)".

Page 15, line 7, strike out "(2)" and insert "(3)".

The SPEAKER. Is there objection to the request of the gentleman from Arkansas?

Mr. BYRNES of Wisconsin. Mr. Speaker, reserving the right to object—and I do not intend to object—I would like to ask the chairman for a brief explanation of the amendment for the Membership.

Mr. MILLS. Mr. Speaker, will the gentleman from Wisconsin yield?

Mr. BYRNES of Wisconsin. I yield to the gentleman from Arkansas.

Mr. MILLS. Mr. Speaker, the bill H.R. 11256, the Federal Tax Lien Act of 1966, which is before us, represents the first substantial revision of the Federal tax lien laws since before the adoption of the income tax in 1913. Except for one amendment made by the Senate, regarding the place of filing and refiling of notices of Federal tax liens, this bill is identical to the bill which was passed by the House 1 month ago.

The remarkable development of commercial transactions, financing devices, and security interests over the years has made a revision of the Federal tax lien laws imperative. In addition, experience under the present tax lien procedure has indicated instances where the present rules work inequities both in and out of commercial areas.

The act is the result of more than 8 years of consideration by the American Bar Association, working in conjunction with representatives of the Treasury Department and the staff of the Joint Committee on Internal Revenue Taxation, and, I believe, provides tax lien procedures more in keeping with modern business usage. It also provides constructive solutions to most of the inequities and uncertainties which exist under present law.

The one change in this bill made by the Senate, that I referred to before, is a good one. It involves the place of filing and refiling of notices of Federal tax liens. Since these notices are supposed to inform potential creditors, it is important that the rules regarding their place of filing be clear. Essentially, the rules are these: Notices affecting real estate will be filed in the office—as designated by the State—where the real estate is located. Notices involving personal property will be filed in the office—as designated by the State—where the taxpayer resides. A corporation or a partnership will be treated as residing at its principal place of business. Any taxpayer who in fact resides outside the country will be treated as residing in the District of Columbia.

Refiling is to be made in the same office in which the original notice was filed. However, where the taxpayer has moved in the meantime and the Internal Revenue Service has received appropriate written notice of that fact at least 90 days before the refiling, then the refiling will be made in two places—the office where the original notice was filed and also the office designated by the State of the taxpayer's new residence. An example of a written notice that would qualify for this purpose is a later tax return of the same taxpayer for the same type of tax.

Mr. Speaker, H.R. 11256, the Federal Tax Lien Act of 1966, is a good bill and I urge its adoption.

Mr. BYRNES of Wisconsin. Mr. Speaker, I withdraw my reservation.

The SPEAKER. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

The Senate amendments were concurred in.

A motion to reconsider was laid on the table.